

**THE INSPECTOR GENERAL ACT OF 1978: TWENTY
YEARS AFTER PASSAGE, ARE THE INSPECTORS
GENERAL FULFILLING THEIR MISSION?**

HEARING
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY
OF THE
COMMITTEE ON
GOVERNMENT REFORM
AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

APRIL 21, 1998

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THE INSPECTOR GENERAL ACT OF 1978: TWENTY YEARS AFTER PASSAGE, ARE THE INSPECTORS GENERAL FULFILLING THEIR MISSION?

TUESDAY, APRIL 21, 1998

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
*Washington, DC.***

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn and Kucinich.

Staff present: J. Russell George, staff director and chief counsel; Randy Kaplan, counsel; John Hynes, professional staff member; Matthew Ebert, clerk; and Mark Stephenson, minority professional staff member.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

We adjourned from last week to this particular hearing. IG's were established 20 years ago by the Inspector General Act of 1978. The 57 inspectors general are charged with conducting audits and investigations of Federal agency programs and operations. In essence, they are the watchdogs of the executive branch.

In the current fiscal year, inspectors general in the executive branch of the Federal Government have a combined budget of \$1.1 billion and combined staff of approximately 10,000 full-time employees. Agency management changed their spending plans by over \$15.1 billion for fiscal year 1996 by following the recommendations of the various inspectors general. In addition, inspector general investigations resulted in 12,508 successful criminal prosecutions.

Despite these accomplishments, the war on waste in the Federal Government is far from over. IG's cannot rest on these statistical accomplishments as the only measure of their performance. The recent audits which were released as the consolidated balance sheet of the executive branch of the Federal Government revealed that billions of taxpayer dollars are being lost to waste, fraud, and mismanagement each year.

In an effort to reduce waste, Congress has passed legislation such as the Government Performance and Results Act and the Chief Financial Officers Act. These initiatives are designed to improve management and accountability in the executive branch

through goals-settings of strategic planning and the development of performance indicators based on solid financial management. Inspectors general have gained new responsibilities under these management laws. Inspectors general need to take a keen interest in the value of program inspection and evaluation and make it one of their primary missions.

Inspectors general are required by law to report their findings both to the President and his designated executives, such as the agency heads, and to Congress. This dual reporting responsibility is designed to ensure greater independence for the inspectors general and prompt attention to agency problems.

Increasingly, however, some questions have been raised about the effectiveness of the reports issued to agency officials and to Congress. Some believe that IG's are either not reporting problems in their agencies to Congress or burying their recommendations deep within their annual and semiannual reports.

To be effective, IG's must on the one hand balance their working relationships with agency management to prevent fraud and waste, and, on the other, their obligation to report agency problems to Congress if this legislative branch is to continue to have trust in them. We must ensure that the congressional Presidential watchdogs do not become agency lap dogs.

Today offices of IG's exist in 27 of the largest executive departments and agencies as well as in 30 smaller designated Federal entities. IG's are a substantial resource and an invaluable weapon in the fight against waste in the Federal Government. Management of executive branch agencies is changing dramatically. It is crucial that IG's perform effectively in this changing environment. Twenty years after their creation, we need to reevaluate the appropriate role of the Office of Inspector General, and that is the purpose of this hearing.

[The prepared statement of Hon. Stephen Horn follows:]

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"The Inspector General Act of 1978: Twenty Years After Passage, are Inspectors General Fulfilling Their Mission?"

April 21, 1998

OPENING STATEMENT REPRESENTATIVE STEPHEN HORN (R-CA)

A quorum being present, the Subcommittee on Government Management, Information, and Technology will come to order.

Inspectors General were established twenty years ago by the Inspector General Act of 1978. The 57 Inspectors General are charged with conducting audits and investigations of Federal agency programs and operations. In essence, they are the watchdogs of the Executive Branch.

In the current fiscal year, Inspectors General in the executive branch of the Federal Government have a combined budget of \$1.1 billion and combined staff of approximately 10,000 full-time employees. Agency management changed their spending plans by over \$15.1 billion for fiscal year 1996 by following the recommendations of the various Inspectors General.

In addition, Inspector General investigations resulted in 12,508 successful criminal prosecutions. Despite these accomplishments, the war on waste in the Federal Government is far from over. Inspectors General cannot rest on these statistical accomplishments as the only measure of their performance.

The recent audits which were released as the consolidated balance sheet of the executive branch of the Federal Government revealed that billions of taxpayer dollars are being lost to waste, fraud, and mismanagement each year.

In an effort to reduce waste, Congress has passed legislation such as the Government Performance and Results Act and the Chief Financial Officers Act. These initiatives are designed to improve management and accountability in the executive branch through the goals settings of strategic planning, and the development of performance indicators based on solid financial management. Inspectors General have gained new responsibilities under these management laws. Inspectors General need to take a keen interest in the value of program inspection and evaluation and make it one of their primary missions.

Inspectors General are required by law to report their findings both to the President and his designated executives; such as agency head; and to Congress. This dual reporting responsibility is designed to ensure greater independence for the Inspectors General and prompt attention to agency problems. Increasingly, however, some questions have been raised about the effectiveness of the reports issued to agency officials and to Congress. Some believe that Inspectors General are either not reporting problems in their agencies to Congress or burying their recommendations deep within their annual and semi-annual reports.

To be effective, Inspectors General must on the one hand balance their working relationship with agency management—to prevent fraud and waste—and on the other their obligation to report agency problems to Congress if this branch is to maintain its trust in them. We must ensure that the Congressional -Presidential watchdogs do not become agency lapdogs.

Today, Offices of Inspectors General exist in the twenty-seven largest executive departments and agencies as well as in thirty smaller designated Federal entities. Inspectors General are a substantial resource and an invaluable weapon in the fight against waste in the Federal Government. Management of executive branch agencies is changing dramatically. It is crucial that Inspectors General perform effectively in this changing environment. Twenty years after their creation, we need to reevaluate the appropriate role of the Office of Inspector General.

Mr. HORN. I now am delighted to yield for an opening statement to my distinguished colleague, the ranking Democrat on the subcommittee, Mr. Kucinich of Ohio.

Mr. KUCINICH. Good morning, Mr. Chairman.

Mr. HORN. Good morning.

Mr. KUCINICH. My voice is a little deeper, not because I am going through puberty, that is because of a slight cold. It is actually a problem with the air not circulating in the plane when you are sitting on the tarmac, one of those things.

Good morning. And I want to thank the chairman for calling this important hearing today. Our committee has a history of working in a bipartisan manner with the IG's to eliminate waste, fraud, and abuse in Federal programs. As we look forward to possible improvement in the Inspector General Act, I am hopeful that the bipartisanship will continue.

The close relationship between the IG's and the Government Reform and Oversight Committee is entirely appropriate. The inspector general community, as well as Congress, is one of the principal watchdogs in the executive branch. There is much we can learn from each other as we work to ensure Government operates in the most effective and efficient manner possible.

IG's have a very difficult job, in part because they are asked to serve so many masters. You are appointed by the President, but report to Congress as well as the head of the agencies. As independent investigators within the Federal agencies, IG's are often the last person a manager wants to hear from. And Members of Congress can get very upset when the need or cost of pet projects might be questioned.

The Chief Financial Officers Act, the Government Management Reform Act, and the Government Performance and Results Act have given the inspectors general some new responsibilities, particularly to ensure that Congress has complete and reliable financial information. As we learned just last week, your work in this area is invaluable.

It has been 20 years since the passage of the original IG Act, and 10 since the amendments authored by Senator John Glenn of Ohio, so it is a good time to take a comprehensive look at the act to review how well it is working and where there may be room for improvement. We also need to continue to ensure that we have the highest quality IG appointments, and that the concerns of that community and the individual members of the community are properly addressed.

I want to welcome Senator Collins and all the other witnesses today. And I look forward to your testimony. And thank you very much, Mr. Chairman.

Mr. HORN. We thank you very much.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Opening Statement -- Rep. Dennis J. Kucinich
Hearing on The Inspector General Act of 1978

April 21, 1998

I want to thank the Chairman for calling this important hearing today. Our Committee has a history of working in a bipartisan manner with the Inspectors General to eliminate waste, fraud and abuse in federal programs. As we look forward to possible improvements in the Inspector General Act, I am sure hopeful that bipartisanship will continue. The close relationship between the Inspectors General and the Government Reform and Oversight Committee is entirely appropriate. The Inspector General community is one of Congress' principle watchdogs in the executive branch. There is much we can learn from each other as we work to ensure that our government operates in the most effective and efficient manner possible.

IGs have a very difficult job, in part because they are asked to serve so many masters. You are appointed by the President, but report to Congress as well as the head of your agency. As independent investigators within the federal agencies, you are often the last person a manager wants to hear from. And Members of Congress can get very upset when the need or cost of pet projects are questioned.

The Chief Financial Officers Act, the Government Management Reform Act, and the Government Performance and Results Act have given the IGs some new responsibilities, particularly to ensure that Congress has complete and reliable financial information. As we learned just last week, your work in this area is invaluable.

It has been 20 years since the passage of the original IG Act, and 10 since the '88 amendments authored by Senator Glenn. It is a good time to talk a comprehensive look at the Act, to review how well it is working and where there may be room for improvement. We also need to continue to ensure that we have the highest quality IG appointments and that the concerns of the IG community, and individual IGs are properly addressed.

I want to welcome today's witnesses. I look forward to your testimony. Thank you Mr. Chairman.

Mr. HORN. And now I have great pleasure to have with us the distinguished chairwoman of the Senate Subcommittee on Investigations of the full Governmental Affairs Committee, the Senator from Maine, Susan Collins. As I have told her, I am one of her fans and will be glad to head her fan club.

I think she did an outstanding job on the Thompson hearings, and while it didn't cure my insomnia, it did permit me to see you in action, and I am very impressed.

Thank you for coming over here.

**STATEMENT OF HON. SUSAN M. COLLINS, A U.S. SENATOR
FROM THE STATE OF MAINE**

Senator COLLINS. Thank you very much, Mr. Chairman. And thank you for your nice comments.

Mr. Chairman, Congressmen, it is a pleasure to be here this morning. The Senate has begun a vote, so I am going to summarize my testimony in the hope that you will include it in its entirety in your hearing record.

Mr. HORN. Without objection.

Senator COLLINS. I commend you for holding these oversight hearings as we mark the 20th anniversary of the Inspector General Act. It is important that we take a close look at the operation of the inspectors general and how their role should evolve to meet changing needs.

As the chairman knows, I chair the Senate Permanent Subcommittee on Investigations, which works very closely with the IG's. In many ways, the IG's are the eyes and ears of my subcommittee, as they are of yours, as we work to detect and protect waste, fraud and abuse, and mismanagement in Federal programs.

As the guardians of the public purse, the IG's are the watchdogs for the taxpayers, fighting wasteful spending and enforcing Federal criminal laws across the country. For the most part, the creation and expansion of inspector general offices throughout the Government has been a real success story.

You have mentioned, Mr. Chairman, the amount that the IG community has saved through its thousands of recommendations. It is literally billions of dollars every year. They have also resulted in the recovery of billions of dollars from companies and individuals who have defrauded the Federal Government. It is an impressive record of accomplishment. Simply put, the IG community as a whole has served the public very well.

The record of the IG's is not, however, totally without blemish. When one considers the enormous power granted to the IG's, enhanced by their independence and their law enforcement authority, Congress must also examine abuses, however isolated, committed by a few IG's themselves.

For example, the overall successful record of the IG community was recently tarnished by the activities of the Treasury Department's Office of Inspector General. The Permanent Subcommittee on Investigations held extensive hearings into the operations of the Treasury IG's office and found that she violated Federal laws in the award of two sole-source consulting contracts.

My subcommittee also found that there was an inappropriate investigation of career Secret Service agents and that the inspector

general misled Congress about the nature of this investigation. In summary, the subcommittee concluded that the Treasury Inspector General failed to meet the high ethical and performance standards expected of an IG. After our hearings, but before our final report was issued, the Treasury IG did resign.

Let me stress that in my view, problems like those in the Treasury IG's Office are not pervasive in the IG community. But IG's are not like any other Government manager. They are the very officials in Government whom we look to to combat waste, fraud, and abuse, and as such they should be held to a higher standard and be above reproach.

I would like now to turn very briefly to some specific issues that I think we should all be examining as we look at reauthorizing the IG law. Our two goals that we should keep in mind are to increase efficiencies and ensure accountability. Specifically, to increase and promote greater efficiency, we should consider combining some of the smaller IG offices into one presidentially appointed, Senate-confirmed IG. This would increase the stature, reduce overhead, and improve accountability to Congress.

For an example, it is difficult to justify why the National Endowment for the Arts and the National Endowment for the Humanities have separate IG offices. They are very small. I think one has three employees, one has five. There is an area for consolidation, in my judgment.

In addition, we should consider whether reporting requirements should be revised. Right now the IG submits semiannual reports to Congress, and they contain often information that is of limited use to us. Revising the contents of the reports and requiring that they be submitted annually, rather than semiannually, would again save money, streamline the reporting process and provide more useful information.

Another issue I think we should consider is whether there should be term limits for inspectors general, such as 5, 7 or 9 years with the option for renewable service based on renomination and reconfirmation. This, I believe, might encourage IG's to stay in their positions longer, as well as provide Congress a statutory framework to review the performance of an IG.

To improve accountability we need to consider whether there should be an independent inspector general for the Internal Revenue Service. I believe that the answer to that question is almost certainly yes, but the real issue is whether Congress should establish an IG within the IRS or whether the Treasury Department IG should take on direct responsibility for overseeing the operations and activities of that critical agency.

To further increase accountability of IG's, should the GAO or some other neutral agency be responsible for systematically reviewing OIG operations? At the conclusion of the Permanent Subcommittee on Investigations' recent review of the Treasury Department's IG, many Senators, many Members of Congress, many executive department employees and taxpayers were asking the question: Who is watching the watchdogs?

Those are just some of the issues under consideration as we work in the Senate to review the operation and the implementation of the Inspector General Act.

Again, Mr. Chairman, I applaud you for your efforts, and I really look forward to working very cooperatively with you as we mark the 20th anniversary of this important law.

Mr. HORN. Well, I thank you for that very thorough statement. And I want to work with you on this.

[The prepared statements of Hon. Susan M. Collins and Hon. John Glenn follow:]

Statement
of
SENATOR SUSAN M. COLLINS

Before
the Subcommittee on
Government Management, Information, and Technology
U.S. House of Representatives

2154 Rayburn House Office Building
April 21, 1998

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Mr. Chairman, I would first like to thank you for the opportunity to appear before the Subcommittee today to discuss the issues related to Inspectors General. As we mark the 20th anniversary of the Inspector General Act, it is important for the Congress to take a close look at the role Inspectors General play today and how their role should evolve to meeting changing needs.

Historically, the Senate Permanent Subcommittee on Investigations, which I chair, has worked closely with Inspectors General. In many ways, the Inspectors General are the eyes and ears of my Subcommittee and the Congress as we work to detect and prevent waste, fraud, abuse, and mismanagement in federal programs. As guardians of the public purse, Inspectors General are watchdogs for the taxpayers, fighting wasteful spending and enforcing federal criminal laws across the country.

For the most part, the creation and expansion of Inspector General offices throughout the government has been a success story. During the past two decades, the IG community has made thousands of recommendations, saving taxpayers literally billions of dollars. As an example, in the first decade of the Inspectors General Act, the Inspectors General identified dollar savings or funds that could be put to better use of more than \$100 billion.

Investigations by Inspectors General have also resulted in the recovery of billions of dollars from companies and individuals who defrauded the federal government. These investigations resulted in thousands of successful criminal prosecutions, debarments, exclusions and suspensions. This is an impressive record of accomplishments - simply put, the Inspector General community, as a whole, has served the public very well.

The record of the Inspectors General is not, however, without blemish. Considering the enormous power granted to Inspectors General, enhanced by their independence and their law enforcement authority, Congress must also examine abuses, however isolated, committed by a few Inspectors General themselves. For example, this successful record was recently tarnished by the activities of the Treasury Department's Office of Inspector General. After an extensive investigation, the Senate Permanent Subcommittee on Investigations found that the Treasury Department Inspector General violated federal laws in the sole-source award of two consulting contracts that totaled almost half a million dollars, engaged in a pattern of careless management, paid for work unauthorized, and made payments for some services without requiring receipts.

My Subcommittee also found that career U.S. Secret Service agents, who appeared before a House Committee about the FBI Filegate matter, were subjected to an unwarranted investigation and negative publicity. The Subcommittee also found that the Treasury Inspector General misled Congress about the nature of this investigation and that official documents were destroyed. The Subcommittee concluded that the Treasury Inspector General failed to meet the high ethical and performance standards expected of an Inspector General. The Inspector General resigned shortly before our final report was issued.

Let me stress that, in my view, problems like the ones in the Treasury Inspector General's office are not widespread in the Inspector General community. However, an Inspector General is not like any other government manager. Inspectors General are the officials in government responsible for combating waste, fraud and abuse in Federal programs. And as such, Inspectors General should be held to a higher standard. To do their job effectively, Inspectors General must be above reproach, must set an example for other government managers to follow, and must not create situations where there is even the appearance of impropriety. Credibility and effectiveness are lost when the office charged with combating waste and abuse engages in the kind of activity that the Inspector General is responsible for deterring.

During the past 20 years, the Inspector General community has grown from 12 in 1978 to 57 Inspectors General today. These 57 Inspectors General receive at least \$1.1 billion in annual funding from the Congress and employ over 10,000 auditors, criminal investigators, and support personnel. The Congress must ensure that these resources are properly managed and directed. The Office of Inspector General is charged with tremendous responsibilities which must be exercised by competent managers and well-trained law enforcement professionals.

As the Congress examines the role of Inspectors General and exercises its oversight responsibility, I suggest that we focus our efforts with two goals in mind: to increase efficiency and to ensure accountability. Specifically:

- To promote greater efficiency, should some of the smaller Inspector General offices be consolidated under one Presidentially appointed, Senate confirmed Inspector General? This would increase stature, reduce overhead, and improve accountability to the Congress. As an example, it is difficult to justify why the National Endowment for the Arts and the National Endowment for the Humanities have separate Offices of Inspector General with three and five employees, respectively.
- To further promote the efficiency of Inspector General operations, should reporting requirements be revised? Some semiannual reports to the Congress total 150 pages and contain information that is of limited use to Members of Congress or their staffs. Revising the contents of reports and requiring they be submitted annually rather than semiannually would save money, streamline the reporting process, and provide more useful information.
- To increase both efficiency and accountability in the Inspector General community, should there be a term limit for Inspectors General, such as 5, 7, or 9 years with the option for renewable service based on re-nomination by the President and re-confirmation by the Senate? This would encourage Inspectors General to stay longer in their positions as well as provide to Congress a statutory framework to review the performance of an Inspector General.
- To improve accountability, should there be an independent Inspector General for the Internal Revenue Service (IRS)? The answer to that question is almost certainly "YES". But the real question is whether the Congress should establish an Inspector General within the IRS or should the Treasury Department Inspector General take on direct responsibility to oversee the operations and activities of that mammoth agency. Either of these concepts would clarify responsibilities and give greater oversight of the IRS, an agency many view as out of control.
- To further increase accountability of Inspectors General, should the General Accounting Office or some other neutral agency be responsible for systematically reviewing OIG operations? At the

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conclusion of the Permanent Subcommittee on Investigations' recent review of the Treasury Department's Inspector General, many Senators, executive department employees and taxpayers were asking "who is watching the watchdogs".

These are just some of the issues under consideration as we work in the Senate to review the operation and implementation of the Inspector General Act.

I applaud you, Mr. Chairman, for holding this hearing, and I look forward to working with you and the Subcommittee on this and other important issues.

Thank you for the invitation to be here this morning.

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Statement for the Record by Senator Glenn

April 21, 1997

I appreciate the opportunity to offer my thoughts about the IG Act in the year of its 20th anniversary. The Senate Governmental Affairs Committee, on which I served as Chairman and now Ranking Minority Member, has a long and bipartisan history with the IG community. In fact, I am very proud that I was an original sponsor of the IG Act and the 1988 amendments, both of which have played a major role in making our government function more efficiently, effectively, and with greater trust and confidence on the part of the American people.

The job of an Inspector General is not easy. He/she is sometimes the last person in the world the agency head wants to see walk in the door; and he/she is not always warmly welcomed at many senior staff meetings. I'm sure George Washington himself wasn't overjoyed back in 1777, when our nation's first Inspector General was appointed by the Continental Congress to audit the accounts of General Washington's army.

IGs are asked to do many things and to serve many masters: the agency, the President, Congress, and most of all, the American taxpayers. It's tough walking such a tightrope trying to keep all of these customers "satisfied".

No federal manager wants to hear that his or her new program initiative is going to cost more than it saves. No military retiree wants to hear that the VA is going to take longer processing checks to reduce fraud. And no Member of Congress wants to hear that an IG has raised questions over the necessity and viability of a particular project which happens to be in the Member's home State or district. That situation has sometimes been the motivation for efforts to reduce some IG's budget or to curtail some IG's authority. I have fought some of those battles myself.

If anything, the IG's role has only become more difficult in a new political culture dedicated to improving management. With the passage of the CFO Act, the Government Management Reform Act (GMRA), and the Government Performance and Results Act (GPRA), IGs have inherited some new authority and some new duties. They now have some responsibility to ensure that we have accurate, reliable, and complete financial information on which to base our policy decisions and, down the road, measure how well each program achieves its goal and at what actual cost. In that context, IGs have a unique role in helping to solve management problems throughout the federal government. The test of their success in this new mission is much like the one applied to their old one and the measure of their success is already evident.

Agents of "Positive Change" in a Brave New World.

In the 20 years since the original IG Act, and almost 10 years since the '88 amendments, I believe the record shows that the IGs have done an outstanding job in performing their mission. In this new world of accountability, both managerial and fiscal, IGs serve as both watchdog and junkyard dog--they sound the alarm as much as they tackle those problems they have already identified. Along these lines, IGs have accomplished much for the American people. In fact, according to the latest PCIE report (1996) on IG progress:

Inspector General (IG) investigations led to \$1.5 billion in "recoveries" last year (1995). *(This is money which has been recovered by the Government from people who have attempted to defraud it).* In addition, based on IG recommendations, agency managers agreed to cancel, or seek reimbursements of, \$2.3 billion from contractors or grantees in 1995. Also based on IG recommendations, managers changed how they planned to spend \$10.4 billion to maximize return on the Federal dollar. *Overall, between 1981-1994, IG's reported \$340 billion in recoveries & funds put to better use from their efforts.*

In addition to IG work on program improvements, and the figures cited above, the report compiles other important IG accomplishments:

\$26.8 billion in recommendations that funds be put to better use;

\$7.2 billion in questioned costs;

1 14,122 successful prosecutions;
 2,405 personnel actions; and
 4,234 suspensions and debarments of persons or firms doing
 business with the Government.

 These facts suggest that IGs are doing the job we intended them to do, in spite of the fact that they are operating in a very difficult and more complex environment. The data also support the fact that the IG's first responsibility continues to be program and fiscal integrity; they are not "tools" of management. Even though, in this day and age, IGs need to make themselves "relevant" to both Congress and the agency, they first must help to make good programs work better, target those most vulnerable to waste and fraud, and help achieve savings wherever they can find them. The record proves this is clearly what the IG's have been about.

 But none of this would be possible without an emphasis on the IG investigative role as a deterrent to abuse. The audit and inspection function, wherein I believe we can better evaluate program operations and efficiencies, and bring to bear more effective, systemic improvements to prevent fraud before it happens, is a critical element of a successful IG program. It stands as the last barrier to management abuse and may be considered the soul of the Act. Nothing we do in the way of reform should fundamentally alter this vital role.

Meaningful IG Reports and Visibility.

With new statutory responsibilities, some concern has been raised about overly burdensome paperwork or reporting requirements on IGs. The Congress now requires of IGs at least 13 different reporting requirements by my count. Things like unsupported costs, disallowed costs, potential monetary benefits, prosecutorial statistics, among others, are part of this new obligation. Though these figures are important, they only represent a snapshot of an IG Office at a given time. They do not present us with a broader picture, nor do they represent the actual impact audits have on key decision-makers. The HUD problems in the 80's are a good example.

We have had a number of similar experiences-- where the questionable program or project is repeatedly cited, but one must go back and review years worth of semi-annual reports to get a comprehensive picture.

In light of this it is difficult for Congress to gauge if the agency's management is getting better--or worse. Are we really getting better at detecting and preventing fraud in the first place, or have new ways been found to "game" the system?

It would be more productive & useful for us to know:

- Which are those "high risk" agency programs that have recurring problems in the areas of waste, fraud, abuse, and mismanagement?
- How long have they been so susceptible?
- How much money is at risk?

- What efforts in the past has the agency undertaken to address the problems? Why haven't they worked?
- What it will take to forcefully rectify the problems? How should we measure the agency's performance in this regard?

This type of report will be far more relevant to the Congressional debate, and also will allow Congress to better understand and appreciate the work of the IGs. To the extent these emphases may be included in the semi-annual reports, we will have made significant progress in improving our picture of how effective the IGs really are.

Devolution, Flexibility, & Accountability.

A number of programs have been consolidated on the federal level, and many of those have been turned directly over to the States to administer. In this process of "devolution", I do have some concerns over our ability to "follow the money". Will there be a proper audit trail? Do IGs have the necessary resources? How are the States equipped themselves to prevent waste and audit these programs? Finally, how well can we rely on the States to fairly measure and report on how well they and the localities have used federal funds?

Besides moving towards more "block grants", we are also proposing increased flexibility on the State & local levels with program requirements, and to consolidate programs to improve their effectiveness. On the federal level, we are moving, through the "PBO" approach (Performance-Based Organizations), to

waive certain government-wide personnel & procurement requirements.

While I am in favor of such experimentation, if properly controlled, we need to be careful. As someone, probably an IG, once remarked: "One man's discretion is another man's abuse!" How we proceed in these sorts of reforms could make all the difference in the functional effectiveness of the IGs.

Numerous other issues may be raised in this 20th anniversary year. Can we improve the appointments process? Should there be term limits for IGs and if so, how long? Should career IGs be eligible for bonuses from the agency head? Should we expand IG's subpoena power? Should we offer blanket law enforcement authority ("Deputization") to all the IGs? And finally should IGs have authorization to retain a portion of the assets they've seized. Is this good policy? Are there "bounty hunter" consequences? I don't know the answers to these questions. I believe resolving them will take serious Congressional hearings and careful examination. I do know that whatever we decide, Congress needs to speak with one voice for all IGs across government. We cannot "balkanize" or vary IG powers & duties between or among agencies.

As I approach my last months as a United States Senator and strong supporter of the IG Act, I look back with great pride on the accomplishments we have made so far among the more than 60 statutory IGs. I am the first one to admit that not everything about how the IGs function is perfect. In fact, any program can always stand improvement. But I strongly believe that we now have

in place a fair, effective, and useful--if partial--solution to some very serious management problems in government. To me, this represents a singularly important success for the Congress and the American people, and one upon which I am hopeful we will continue to build into the 21st century and beyond.

Mr. HORN. Let me—if you have time before they vote, I remembered in my Senate staff experience they can say, “How am I recorded, Mr. President?” and that can go on for a half hour.

Just a couple of things. I don’t know if you are familiar with the case that one of our ablest Members brought to us, Lee Hamilton of Indiana, the ranking Democrat on what was the Foreign Affairs Committee, about the inspector general and the Department of State, where he felt there was some violation of due process. We had a hearing on that. I asked the IG’s to bring me in a process of how we can deal with the witnesses and what is fairness in terms of a witness knowing what their rights are. And I haven’t really seen much out of that yet. And I just wondered if you had been familiar with that due process problem.

Senator COLLINS. We haven’t looked very specifically at that issue, except with regard to the Secret Service agents who were investigated by the IG. I do believe that their rights were fully protected, and they were subjected to a great deal of unfair publicity and negative criticism, when, in fact, in my judgment, the IG should not have opened an investigation at all. So although I can’t generalize, and I am not familiar with the State Department case that you mentioned, certainly the overview that we did of the Treasury IG’s suggests that is an area that we should look at.

Mr. HORN. Well, my last question is simply a comment. I think you are absolutely right on the smaller agencies, and in the 1965 Act for the Arts and Humanities, I mean they never said, “You don’t have to speak to each other.” And there is no reason why one inspector general couldn’t meet the needs of both.

I do have a problem, or think it might be a problem if we have sort of one big inspector general for a lot of small agencies. I think there is some value to be in proximity and get the tips in the hall or at the water cooler that you might get if you were part and with in the housing of that particular organization. That is simply one thought on the subject you might want to think about.

Senator COLLINS. That is a good point, Mr. Chairman. There are some areas also where you have independent regulatory agencies, like the SEC, where I think maintaining a separate IG is absolutely critical. But there are some of these small agencies with very related missions that I think we could have some consolidation without doing damage to the process. But you are right, it needs to be a case-by-case decision.

Mr. HORN. Well, thank you again for coming over here. We really appreciate the wisdom you have brought to this discussion.

Senator COLLINS. Thank you very much, Mr. Chairman. I look forward to working with you.

Mr. HORN. Thank you very much.

We will now have panel two come forward, and that is James Naughton, the former professional staff, counsel, to the once-known Committee on Government Operations; the Honorable Edward L. Harper, chief financial officer, American Security Group, former Deputy Director, Office of Management and Budget; Dr. Paul C. Light, the director of the public policy program, the Pew Charitable Trusts; and Mr. David Clark, Director, Audit Oversight and Liaison Group, Accounting and Information Management Division, General Accounting Office.

Now, we are missing Mr. Harper it looks like. And have we got everybody assigned in the right place. There we are. Well, we have a seat for Mr. Harper.

Gentlemen, you know the routine on all witnesses, but Members, we raise our right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all three witnesses have affirmed.

And we will just go down the line as we have them here. And it is good, because we have an expert that really knows what happened in the Inspectors General Act. Mr. Naughton was working very closely over the years with the Members of both parties after they brought forward this bipartisan proposal. And I was fascinated by the history that you described. And it is a pleasure to have you here.

STATEMENTS OF JAMES R. NAUGHTON, FORMER PROFESSIONAL STAFF MEMBER AND COUNSEL, COMMITTEE ON GOVERNMENT OPERATIONS; EDWIN L. HARPER, CHIEF FINANCIAL OFFICER, AMERICAN SECURITY GROUP, AND FORMER DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET; PAUL C. LIGHT, DIRECTOR, PUBLIC POLICY PROGRAM, THE PEW CHARITABLE TRUSTS; AND DAVID L. CLARK, DIRECTOR, AUDIT OVERSIGHT AND LIAISON GROUP, ACCOUNTING AND INFORMATION MANAGEMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. NAUGHTON. Thank you, Mr. Chairman. It is a pleasure to be here. I've watched some of your hearings on C-SPAN, and I appreciate the thorough and nonpartisan way in which your subcommittee has gone into subjects that it is examining.

I am a member of the bar in the State of Iowa, the District of Columbia, and I have a CPA certificate in Virginia. From 1955 to 1983, I was counsel for the House Government Operations Subcommittee chaired by former Representative L.H. Fountain, the chief sponsor of the 1976 and 1978 inspector general acts. In that capacity, I was involved in the investigations and inquiries which demonstrated the need for the 1976 and 1978 acts and participated in drafting the language which ultimately became law.

I might note that the IG legislation had strong bipartisan support from the very beginning. Then Government Operations Committee Chairman Jack Brooks and Ranking Minority Member Frank Horton worked very hard to secure passage of the acts. Other House Members who actively supported the legislation included the late Ben Rosenthal and former Representatives Elliott Levitas, Clarence Brown, and Neal Smith.

I also noted in getting ready for this hearing that Representative Benjamin Gilman, the ranking majority member on the full committee is, I believe, the only Member currently in Congress who actually testified in support of the legislation.

On the Senate side, former Senators Sam Nunn and Thomas Eagleton, as well as Senators Roth and Glenn were among those who played a leading part in the enactment of the legislation.

There were three significant events which led Congressman Fountain to introduce the legislation which became law. The first

event occurred in 1962, when a notorious Texas swindler named Billie Sol Estes was subject to an investigation by the subcommittee. We found that Billie Sol Estes had probably been insolvent for more than 10 years during which his activities had been the subject of an almost unbelievable number of inquiries and investigations by agencies of the Federal Government, totally uncoordinated.

We also found that the Department of Agriculture had numerous audit and investigative units reporting directly to the program managers and was conducting several separate investigations of Estes with no coordination whatever. That led then Secretary Orville Freeman to establish a nonstatutory inspector general reporting directly to the Secretary.

The second significant event occurred in 1974 when then Secretary of Agricultural Earl Butz dismantled the nonstatutory inspector general, clearly demonstrating that a statutory basis was needed to assure the continued existence of the offices.

Thereafter we found, on looking into activities of the Department of Health, Education, and Welfare, that HEW had 129,000 employees and was responsible for about 300 separate programs. We got several different numbers as to the exact number of programs that they were administering. Nobody seemed to know even though he was spending about \$118 billion annually, which at that time was one-third of the entire Federal budget. Moreover, HEW's central investigative unit had 10 investigators with a 10-year backlog of uninvestigated cases and could not open a single investigation without specific approval of the Secretary or the Under Secretary.

In view of the deplorable situation at HEW, the subcommittee developed and secured the enactment of the 1976 legislation creating the statutory IG at HEW, and that became the model for the 1978 act.

In 1977, we had a series of hearings looking into the activities of additional departments and agencies and found serious problems and deficiencies everywhere we looked.

Lack of independence. The personnel of audit and investigative units reported to the program managers.

Lack of effective organization. There were no central offices to coordinate the activities of auditors and investigators.

Lack of resources. Some audit cycles were as long as 20 years, while other activities had never been audited. One department had only six trained criminal investigators to look at irregularities in the expenditure of \$25 million annually.

Lack of information was a very serious problem, because the basic information needed by both the agency heads and Congress to promote economy and efficiency to combat fraud, waste, and abuse was simply not available.

Mishandling of criminal cases. In some agencies, investigators were not permitted to provide evidence of criminal conduct to the Department of Justice without clearance from the agency's Office of General Counsel. As a result, some potential criminal cases were being held up for months or even years before information was furnished to the Justice Department. In other cases, information was never provided.

Lack of coordination. Instances were found in which multiple Federal investigations of the same subject matter had been or were

being conducted with an almost total lack of coordination or communication.

The stated purpose of the 1978 act, quite simply was to create independent and objective units with three basic responsibilities: one, to conduct and supervise audits and investigations relating to programs and operations; second, to provide leadership and coordination and recommend policies for activities designed, A, to promote economy, efficiency, and effectiveness, and, B, to prevent and detect fraud and abuse in programs and operations, and, C, and perhaps even most important, to provide a means for keeping the agency head and the Congress fully and completely informed about problems and deficiencies and the necessity for and progress of corrective action. That is the basic function of IG's.

The remaining provisions of the act were put in so IG's would have the authority necessary to carry out these purposes. The 1978 act was opposed by the Office of Management and Budget, all 12 of the departments and agencies affected. The Department of Justice's Office of Legal Counsel said it was unconstitutional in part. Nevertheless, it passed the House by a vote of 388 to 6 and was approved by the Senate without opposition. It became law on October 12, 1978.

Five Presidents have had dealings with the IG's since that October 1978. I would have to say that only one of them gets a completely favorable report. President Gerald Ford signed the HEW IG bill in October 1976 and left town shortly thereafter without, as far as I know, doing anything to mar his perfect batting average. The succeeding four administrations have had mixed records.

President Carter did not actually oppose the enactment of the 1978 act, although everyone else in his administration did. Thereafter, he issued some supportive statements, and provided some support.

President Reagan took two steps—well, he emphasized his concern about the magnitude of fraud and waste in Federal programs and the urgent need for corrective action; however, on Inauguration Day, he took two steps which could hardly qualify as "corrective action." The first step was to impose a freeze on hiring by inspectors general, which was even stricter than the one previously imposed under the Carter administration. The second was to summarily remove all incumbent inspectors general. The removal operation was, to phrase it delicately, not well-planned.

The IG's were removed on January 20, 1981. However, they were not told what had happened to them until the next day, when most of them received form letters on which the name of the signer was misspelled. One former IG was notified of his "removal," 3 weeks after he had retired. No apparent thought was given to the length of time it would take to fill the vacancies, and for at least 6 months, there was not an IG to be found in the Federal Government.

However, after the removals, President Reagan took some steps to rectify what he had done. He announced that he had no intention of politicizing the IG offices, and also, thanks to Ed Harper, who isn't here, the Reagan administration—I should say Ed Harper, because the White House Personnel Office really had nothing to do with it—but Ed Harper stopped them from doing what comes

naturally to White House personnel offices, appointing people whose qualifications are political and not suited for the job that they are undertaking.

But assurances were given, and Ed Harper came through on that. They set up a committee of IG's to screen potential applicants for IG positions in order to assure that they had appropriate qualifications, and it worked quite well. Some very well qualified inspectors general were reappointed, and others were newly appointed. After Ed Harper left, Joe Wright continued to be very supportive of the IG's.

President Reagan also established the President's Council on Integrity and Efficiency, which I think is an organization that has served a very useful purpose. Its effectiveness depends a lot on the kind of backing it gets.

I am afraid I cannot give President Bush very high marks. If my memory is correct, shortly before President Bush took office, all political appointees were asked to submit their resignations so he would have a free hand in choosing his own. Whoever sent out the notices was apparently not aware that the IG's were not political appointees. I don't think any of the IG's ever actually submitted their resignations, but they were more or less on probation in their own minds during the Bush administration.

During the Bush administration, although I wouldn't fault President Bush himself for that, the infamous KOMEAC memorandum was issued by our old friends, the Office of Legal Counsel of the Department of Justice. OLC contended that IG's were supposed to be internal investigators, "police of the police," as they called it. It was all right for them to investigate fraud and abuse if it was being perpetrated by Federal employees, but if it was not being done by Federal employees or was not clearly being financed with Federal money, it was verboten for them to look into it.

For example, the State Department inspector general would have a free hand in investigating passport fraud if employees were selling passports; however, in the event some entrepreneur sublet space in the Federal Reserve building across the street and opened an office for the sale of phoney passports, that would not be appropriate for the IG to investigate.

I wrote a long memorandum some years ago on the fallacies of the KOMEAC memorandum. I think the folks responsible for issuing that read some provisions of the IG Act, but had never bothered to get through the rest of it. The contention that the IG's were supposed to only monitor the work of other investigators was quite interesting, because when we set up the IG Act, we transferred practically all of the investigators into the IG offices. So, therefore, the problem with having the IG's be the "police of the police" is there weren't any police for them to investigate.

The KOMEAC memorandum, I think, has faded into well-deserved oblivion. I don't think it is a problem at the present time. There are other problems with the Department of Justice. I think at times the relationship of the Department of Justice with individual IG's has been very good. June Brown can probably tell you about the excellent cooperation that HHS, so far as I know, gets from the Department of Justice, including a joint task force. I think your subcommittee has gone into that.

On the other hand, an outstanding example of lack of cooperation or lack of effectiveness particularly involves the HUD scandals of some years back in which numerous, well-connected people ripped off the Federal Government for very significant amounts of money. Thanks to congressional hearings, an independent counsel was appointed, who is still working there after 8 years and—excuse me, \$30 million since 1990. They have secured some criminal convictions, but they have not—the mockery has been the program—the program most mentioned in connection with the HUD scandals, although there have been criminal convictions, neither the Department of Justice nor the Independent Counsel Office, to the best of my knowledge, has recovered anything in civil damages because of the HUD scandals.

As a matter of fact, subsidies which were illegally obtained are still being paid and will be paid for another 5 years or so. Tax credits which were also illegally obtained, I guess they will run out next year. But to give you an—the Department of Justice contended when the question was raised about the lack of criminal action, said in effect that it was not needed because, where appropriate, recoveries were made through the imposition of criminal fines.

Well, that is simply not true. To give you an example, a gentleman who spent a year or so working for former Secretary Pierce left to become a consultant to help people get MOD rehab funds, while at the Department of HUD, he was instrumental in obtaining \$37 million in Government subsidies for a developer in Puerto Rico for which he received \$60,000 in bribes.

According to the indictment, the same gentleman continued to engage in a conspiracy to defraud the United States for about 11 years. He eventually pleaded guilty to accepting the \$60,000 in bribes and received a sentence of 200 hours of community service. He was fined \$20,000; one-third the amount of the bribes. The developer who gave the bribes was never—so far as I know, no action whatever was ever taken either criminally or civilly. There are problems in getting consistent action by the Department of Justice. I do not think it is a well-managed department.

[The prepared statement of Mr. Naughton follows:]

STATEMENT OF
JAMES R. NAUGHTON
BEFORE THE
SUBCOMMITTEE ON
GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY
OF THE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
APRIL 21, 1998

I am a member of the bar in Iowa and the District of Columbia, and hold a CPA certificate in Virginia. From 1955 to 1983, I was counsel for the House Government Operations subcommittee chaired by former Representative L. H. Fountain, the chief sponsor of the 1976 and 1978 Inspector General Acts. In that capacity, I was involved in the investigations and inquiries which demonstrated the need for the 1976 and 1978 Acts and participated in drafting the language which ultimately became law.

I am pleased to have this opportunity to discuss the statutory Offices of Inspector General.

Although they have a similar name, the Offices of Inspector General created by the 1976 and 1978 Acts were not inspired by or patterned after military inspector general units - which have been in existence since the 18th century - or a statutory office of Inspector General for Foreign Aid which was established around 1960 and abolished in the 1970s.

The IG legislation had strong bipartisan support from the very beginning. Then Government Operations Committee Chairman Jack Brooks and Ranking Minority Member Frank Horton worked very hard to secure passage of the IG Acts. Other House members who actively supported the legislation included the late Ben Rosenthal and former Representatives Elliott Levitas, Clarence Brown, and Neal Smith. I believe Rep. Benjamin Gilman, the Ranking Majority Member of the Government Reform and Oversight Committee is the only member still in Congress who testified in support of the legislation.

On the Senate side, former Senators Sam Nunn and Thomas Eagleton and Senators Roth and Glenn were among those who played an active role in passage of the legislation.

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The 1976 Act

The belief by Congressman Fountain and members of his subcommittee that IG legislation was necessary was motivated to a considerable extent by three significant events.

The first event, which began in 1962, was an extensive investigation by the Fountain subcommittee of the operations of Texas swindler Billie Sol Estes. The subcommittee found that Estes had probably been insolvent for more than ten years, during which his activities had been the subject of an "almost unbelievable number" of inquiries and investigations by agencies of the Federal government.

However, Estes was able to continue his fraudulent operations because the investigations were conducted "with an almost total absence of effective coordination or communication between or within the departments, agencies and subunits involved".

The subcommittee investigation disclosed that audit and investigative activities of the Department of Agriculture were being conducted by a number of separate and uncoordinated units which reported to officials directly responsible for the programs being reviewed. Disclosure of these organizational and procedural deficiencies clearly demonstrated the need for drastic changes and led then Secretary of Agriculture Orville Freeman to consolidate USDA auditing and investigative responsibilities under a non-statutory Inspector General reporting directly to the Secretary.

The second event was the 1974 decision by then Secretary of Agriculture Earl Butz to dismantle the Department's non-statutory Office of Inspector General, which clearly demonstrated that a statutory basis was needed to assure the continued existence of IG offices.

Shortly after the untimely demise of the Agriculture Department OIG, a Subcommittee investigation disclosed that an Inspector General for the Department of Health, Education and Welfare (HEW) was badly needed. HEW then had more than 129,000 employees and was responsible for about 300 separate programs involving expenditures of more than \$118 billion annually -- a third of the entire Federal budget at that time. However, HEW's central investigative unit had only ten investigators with a ten-year backlog of uninvestigated cases; moreover, the unit could not initiate any investigation without specific approval of the Secretary or Under Secretary.

Other units responsible for promoting economy and efficiency and combating fraud and abuse in HEW programs were scattered throughout that Department in a haphazard and fragmented manner, with no single unit having the overall responsibility and authority necessary to provide effective leadership and coordination. For

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example, HEW had two separate units investigating fraud and abuse by medical providers; one unit was assigned responsibility for the medicare program and the other for medicaid. Some providers were undoubtedly defrauding both programs. However, instead of requiring coordination and cooperation between the two units, HEW regulations prohibited either unit from telling the other which providers they were investigating or what problems they were finding.

In view of the deplorable situation at HEW, the subcommittee developed and secured the enactment of the 1976 legislation establishing a statutory Office of Inspector General at HEW. With minor exceptions, powers and duties of the newly created HEW Inspector General were the same as those subsequently provided for Offices of Inspector General established under the 1978 Act.

The 1978 Act

In 1977, the subcommittee held a series of hearings to determine whether statutory Offices of Inspector General should be established at additional departments and agencies. Almost everywhere we looked we found serious problems and deficiencies in the organization, procedures and resources of auditing and investigative units in Federal departments and agencies. Major problem areas included:

Lack of Independence: Personnel of audit and investigative units reported to and were hired or fired by officials directly responsible for the programs being examined. In some agencies, investigators were not permitted to investigate allegations of criminal conduct without specific clearance from program officials.

Lack of Effective Organization: Agencies had no central office with overall responsibility for audits and/or investigations; instead, multiple units reporting to different officials were scattered throughout departments and agencies in agency in haphazard fashion. One department reported having 116 separate audit and investigative units.

Lack of Resources: Some audit cycles were as long as 20 years, while other activities had never been audited. One department had only six trained criminal investigators to look into irregularities in the expenditure of \$25 billion annually. The lack of resources was particularly indefensible in light of estimates that additional investigators would repay as much as 20 times their costs through savings and recoveries.

Lack of Effective Leadership: Officials to whom auditors and investigators reported either had program responsibilities or were otherwise unable or unlikely to devote adequate attention to audit or investigative responsibilities.

4.

Lack of Information: Basic information needed by both agency heads and Congress to promote economy and efficiency and combat fraud, waste and abuse was simply not available. Most agencies had no affirmative programs to identify possible fraud or abuse or to encourage employees to report evidence of irregularities.

Mishandling of Criminal Cases: In some agencies, investigators were not permitted to provide evidence of criminal conduct to the Department of Justice without clearance from the agency's Office of General Counsel. As a result, some potential criminal cases were being held up for months or even years before information was furnished to the Justice Department; in other cases, information was never provided.

Lack of Coordination: Instances were found in which multiple Federal investigations of the same subject matter had been or were being conducted with an almost total absence of coordination or communication between the investigators involved. Moreover, there was usually no single individual who had both the information and the authority necessary to insure effective coordination

Provisions of 1978 Act

The stated purpose of the 1978 IG Act was to create independent and objective units--

- (1) to conduct and supervise audits and investigations relating to the programs and operations of their agencies;
- (2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and
- (3) to provide a means for keeping the agency head and the Congress fully and completely informed about problems and deficiencies and the necessity for and progress of corrective action.

The Act contains a number of provisions specifically designed to correct major problems and deficiencies disclosed by the subcommittee's investigations.

To remedy organizational problems, the Act transferred existing audit and investigative units to the newly created Offices of Inspector General (OIGs).

To assure independence, the Act provided that IGs would be appointed and could be removed only by the President. It authorized each IG to select and employ their own staff and to make such investigations and reports as the IG decided were necessary or desirable; moreover, it specifically prohibited interference with audits or investigations by agency personnel.

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To promote objectivity, the Act required that IGs be appointed without regard to political affiliation and were not to engage in partisan political activities. The act also prohibited the transfer of program operating responsibilities to IGs.

The Act specifically charged IGs with responsibility for providing leadership and coordination in matters involving the promotion of economy and efficiency and the prevention and detection of fraud and abuse in agency programs and operations.

To remedy deficiencies in the availability of information, the Act directed the IGs to keep agency heads and the Congress fully and completely informed about serious problems through periodic reports and otherwise. Moreover, the Act provided IGs with strong independent authority to obtain information through subpoenas and other means.

The Act also requires IGs to report expeditiously to the Attorney General when the IG has reasonable grounds to believe there has been a violation of Federal criminal law, thereby eliminating the ability of agency officials to prevent or delay furnishing of such information. (It should be noted that the Act does not require an IG to suspend his or her own investigation.)

For anyone interested in a more detailed description of the IG Act, I would recommend an excellent 6 page summary of the 1978 Act, as amended through April 1997, which was prepared by Fred Kaiser, Specialist in American National Government at the Congressional Research Service, Library of Congress.

Opposition to 1978 Act

The 1978 IG Act was initially opposed by the Office of Management and Budget (OMB), all twelve of the departments and agencies affected, and the Justice Department's Office of Legal Counsel (OLC), which contended that some of the Act's provisions were unconstitutional. Nevertheless, the proposed legislation passed the House by a vote of 388 to 6, was approved by the Senate without opposition, and became law on October 12, 1978.

Five Presidents and the Inspectors General

The HEW Inspector General Act became law in October 1976, during the administration of President Gerald Ford. Since that time, four more Presidents have dealt with matters involving statutory Inspectors General.

Only one of them gets a totally favorable rating. President Ford signed the HEW IG bill and left town shortly thereafter without - so far as I know - doing anything to mar his perfect batting average.

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The succeeding four administrations have had mixed records.

President Carter himself, to the best of my knowledge, never publicly expressed opposition to the proposed 1978 Act. However, as noted earlier, OMB and every department and agency affected by the proposed legislation opposed its enactment.

President Carter signed the 1978 Act into law in October 1978. In December 1978, he described the statutory Inspectors General as "Perhaps the most important new tools in the fight against fraud...", and in 1979 he established an Executive Group composed of IGs and other Federal officials to serve as a coordinating mechanism for the new Offices of Inspector General.

In 1980, an OMB official suggested that the IGs would be allowed a badly needed increase in staffing; however, a hiring freeze imposed by the Carter Administration insured that the number of positions actually available would be far less.

Before his election, President Reagan had emphasized his concern about the magnitude of fraud and waste in Federal programs and the urgent need for corrective action. However, on Inauguration Day in 1981, he took two steps which could hardly qualify as "corrective action".

The first step was to impose a freeze on hiring by Inspectors General which was even stricter than the one previously imposed under the Carter Administration. The second was to summarily remove all incumbent Inspectors General.

The removal operation was, to phrase it delicately, not well-planned. The IGs were removed on January 20, 1981. However, they were not told what had happened to them until the next day when most of them received form letters on which the name of the signer was misspelled. One former IG was notified of his "removal" three weeks after he had retired.

The removals were ordered with no meaningful review of the qualifications and performance of the incumbent IGs and without notice to or consultation with Members of Congress of either party or any of the individuals newly designated to head the affected agencies.

No apparent thought was given to the length of time it would take to fill vacancies created by the mass removals. As a result, there were no statutory IGs at most agencies for at least six months.

Shortly after the removals, President Reagan assured concerned members of Congress of both parties that he had no intention of "politicizing" the IG offices. In July 1981, in a unanimous report, the House Committee on Government Operations stated that the President's assurances and the appointment or reappointment of

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highly qualified individuals as Inspectors General had done much to alleviate concern about "politicization".

The committee commended then Deputy OMB Director Edwin Harper for his role in the selection process, stating that "his efforts undoubtedly contributed substantially to the generally high quality of the nominees". Joseph Wright, Harper's successor as Deputy OMB Director, continued to provide strong support for the Inspectors General.

The President's Council on Integrity and Efficiency was established early in the Reagan administration. During most of the Reagan administration, an informal committee of Inspectors General was used to screen the qualifications and experience of applicants interest in IG positions.

Shortly before President Bush took office, Reagan appointees - including IGs - were told to submit their resignations so that President Bush would have a free hand in deciding which ones to reappoint and which ones to replace. The incumbent IGs, so far as I am aware, declined to submit resignations. They were not removed, but obviously had no reason to believe they would receive strong support from the President in carrying out their duties.

It is my impression that the Clinton transition team had relatively little understanding of or interest in the Inspectors General. If my recollection is correct, the Clinton administration was slow to fill vacant positions and paid little or no overt attention to the IGs until the issuance of the Gore Report on Reinventing Government in September 1993. Among other things, that report:

- expressed dismay about the amount of money being spent on staffs of the GAO and the Inspectors General, although graciously conceding that "Not all this money is wasted"; (emphasis added)
- complained that IG staffs often develop adversarial relations with agency managers who break rules;
- suggested that, although the government cannot entirely do without auditors, it had twice as many as it should.

The Reinvention Report also promised that its proposed management reforms would result in the net elimination of approximately 252,000 positions, and would be concentrated in the "structures of over-control and micromanagement" including auditors.

Despite the report's prediction, I am not aware of any serious effort being made to eliminate half - or even a substantial percentage - of the Federal government's auditors. In fact, some - though not all, Clinton appointees understand the importance of the IG's work and have strongly supported them.

Performance of Inspectors General

It isn't easy to devise a uniform set of standards to measure the performance of Inspectors General.

As individuals, some Inspectors General have done - and are continuing to do - outstanding work. Most are doing a good job; the performance of a relatively small number has been less than satisfactory.

While it may be hard for an outsider to assess performance, those who serve together in the IG community and have an opportunity to observe each other's work on a continuing basis often have similar opinions concerning which of their colleagues are most and least effective.

I recall from my years on the Hill that some members of Congress were exceptionally effective, others were exceptionally ineffective, and there was a general consensus as to which members belonged in each category.

As a group, I think the Inspectors General have done a good job. In May 1988, Joseph Wright, then OMB Deputy Director, stated that IG activities during fiscal years 1981 through 1988 had resulted in savings and cost avoidance of \$110 billion and nearly 23,000 successful civil and criminal prosecutions.

Not all the monetary benefits claimed by some IGs have been fully supported, but even when discounted the total is impressive.

Statistics presented in 1988 by Derek Vander Schaaf, then Deputy Inspector General at the Department of Defense (DOD) are in some respects even more impressive. Vander Schaaf testified that 20 of the 100 largest defense contractors were convicted of procurement fraud during the seven years following establishment of the DOD Office of Inspector General. By contrast, according to Vander Schaaf, not one major defense contractor was convicted of such fraud during the preceding four decades.

Although it often cannot be accurately measured, IGs do invaluable work in promoting economy and efficiency and preventing fraud and abuse.

Has the Role of Inspectors General Changed since 1978?

In my opinion, the fundamental role of the Inspectors General in 1998 is no different than it was in 1978.

The basic mission of Inspectors General was - and still is - to promote economy, efficiency and effectiveness and to prevent and detect fraud, waste and abuse in Federal programs and activities. The primary means of accomplishing this mission was - and still

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is - by providing necessary information and appropriate recommendations to Executive agencies and Congress.

While the fundamental role of the Inspectors General has remained constant, they have obviously been deeply affected by technological and other changes which have occurred in both government and private sectors. Moreover, enactment of additional financial management legislation has influenced IG priorities and contributed considerably to their workload.

Possible Changes in the IG Act

I know you are interested in changes that might be made to strengthen the Inspector General concept.

It is my impression that Presidentially appointed IGs are not having any major problems because of the language of the IG Act. There is - of course - always room for improvement. For example, it might be useful to review the detailed reporting requirements imposed by the 1988 amendments to insure that the usefulness of information required is commensurate with the workload involved in providing it. Another area which might be examined is whether IGs should be allowed to exercise testimonial subpoena authority under appropriate circumstances and whether law enforcement authority, when necessary, should be made available in a more timely and less complicated manner than is presently the case for some IGs.

Inspectors General at designated agencies have problems not faced by Presidential appointees. They have less independence, since they are usually hired and can be removed by the agency head; this presents a particularly difficult problem if the IG is called upon to investigate allegations against the agency head. In very small offices, administrative overhead can consume a substantial percentage of available resources.

There is always the danger, of course, that beneficial amendments may be accompanied by unanticipated negative changes. Before initiating changes in the law, I think it is important to ascertain whether or not the problems needing correction are due to weaknesses in implementation of the law by individual IGs, or to other non-statutory reasons, such as lack of resources or programs which are inherently almost impossible to monitor adequately.

Problems and Opportunities

I believe the Inspectors General have done a good job over the past twenty years. I also believe they can and should do a better job in the future. Among the problems which need to be addressed are:

- Ignorance of the law. People who should know better - including agency heads and program managers - do not fully understand the

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responsibilities and independent status of the Inspectors General.

- Underuse of IG Reports. Reports by Inspectors General, even when well written, are too often not used effectively by agency heads, Congress or media. In the absence of Congressional or media interest, there is less assurance that IG recommendations will be seriously considered by agency heads.

- Lack of adequate resources. IGs consistently have difficulty in obtaining additional resources, even though added employees would be likely to save or recover many times the cost of hiring them.

- Nearly Impossible programs. Some programs are so complicated and/or susceptible to fraud and abuse that they are almost impossible to administer and monitor effectively. This is particularly true when the tax code is used to provide benefits for unrelated programs. Attached as Exhibit A is material I prepared some time ago concerning the vulnerability of housing tax credits to fraud and abuse.

- Problems with Agency Heads. While remaining independent, a good IG can and should be an agency head's most valuable source of assistance in avoiding pitfalls and promoting the effective operation of the agency. The working relationship between agency heads and IGs at some agencies is excellent. At others, there have been problems.

For example, a Deputy HUD Secretary, who had obviously never read the IG Act, actually ordered the Inspector General not to respond to inquiries from the media without permission of the HUD Office of Public Affairs. When the IG quite properly cited her independent status and declined to be subject to supervision of the Public Affairs office, a HUD official asked the PCIE to investigate the IG for violation of the Inspector General Act. I recently wrote an article for the PCIE Journal of Inquiry discussing this situation in detail, which I would be glad to provide for the subcommittee's hearing record.

In the HUD matter, the IG's actions were both proper and commendable. This does not mean, of course, that all IGs are always right. Agency heads must respect the independent status of Inspectors General. IGs in turn should make every effort to work cooperatively with agency heads. They should not be afraid to give advice on potential problems before bad things happen rather than remaining aloof and playing "gotcha" later.

Exhibit A

November 1995

Vulnerability of Housing Tax Credits to Fraud and Abuse

Low income housing tax credits (LIHTCs) cost taxpayers around \$3 billion annually in lost revenues.

LIHTCs are particularly vulnerable to fraud and abuse; reasons for this include the following:

- since the tax credits are usually sold to investors, a large percentage of their value is diverted to pay sales commissions;
- although the Federal government bears the cost of low-income housing tax credits, the credits are allocated by state and local housing finance agencies;
- both the Department of Housing and Urban Development (HUD) and the Department of Agriculture provide low-income housing subsidies under a number of different programs, but do not allocate tax credits awarded in connection with subsidized low-income housing projects;
- developers have been able to obtain housing subsidies fully adequate to provide affordable housing from Federal agencies and then obtain LIHTCs from state agencies; and
- the ultimate responsibility for monitoring tax credits rests with the Internal Revenue Service, which does not have administrative responsibility for or familiarity with Federal housing programs.

Since the amount of tax credits allocated is based on a percentage of project costs, developers have a strong incentive to incur unnecessary costs and to inflate actual costs through transactions with "paper" corporations and/or collusive arrangements with subcontractors.

The widespread practice of selling tax credits through syndicators makes it possible for syndicators to collect huge fees while developers can walk away from projects shortly after completion with enormous windfall profits.

1989 investigations of the "HUD Scandals" produced concrete evidence that unscrupulous developers had made huge windfall profits through sale of tax credits.

An analysis by the General Accounting Office of eight projects disclosed that sale of tax credits enabled the developers to realize between \$250,000 (for a 36-unit project) and \$2.1 million (for a 352-unit project) above the stated cost of acquiring and rehabilitating the projects.

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Hud Reform Act Enacted and Ignored

The HUD Reform Act of 1989, which applies to the Rural Rental Housing program as well as to HUD programs, includes provisions specifically designed to halt windfall profits from sale of tax credits by limiting total government assistance to the amount necessary to provide affordable housing.

An IRS Assistant Commissioner assured a Senate committee in 1990 that appropriate enforcement action was being taken to enforce the 1989 Reform Act. However:

- a 1992 Congressional hearing, together with OIG and GAO reports, disclosed that FmHA had ignored the HUD Reform Act requirements and allowed developers to make profits of as much as 970% on their investments through sale of tax credits; and

- although tax credits are specifically defined as government assistance in the HUD Reform Act, FmHA's National Office issued a written directive stating that proceeds from sale of tax credits should be considered "personal income" belonging to developers rather than government assistance.

- an August 1995 OIG audit indicated that developers were still realizing windfall profits of as much as 650% on their investments through sale of tax credits, and that REHCS had still not taken effective action to comply with the law and stop windfall profits from sale of tax credits.

IRS Inaction

According to a published report, an IRS internal audit estimates losses from improperly claimed tax credits at as much as \$600 million annually.

Although state and local agencies required to report evidence of non-compliance, IRS - despite assurances to Congress - apparently ignored such reports until recently.

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Mr. Naughton is an Attorney and Certified Public Accountant with extensive experience relating to Federal legislation, programs and operations, including work as a consultant for numerous Federal departments and agencies.

Mr. Naughton was Counsel, Intergovernmental Relations and Human Resources Subcommittee, U. S. House of Representatives from 1955 to 1983. In this capacity, he personally drafted much of the legislation establishing statutory Offices of Inspector General (OIGs) in Federal departments and agencies.

In addition to his role in the establishment of IG offices, Mr. Naughton directed numerous investigations and reviews of government-related programs and activities. His work covered a wide spectrum of government-related activities, including such subject areas as:

- Oversight reviews of OIG operations;
- Auditing, investigative and fraud prevention activities;
- Federally-financed health, education, welfare and housing programs;
- Agricultural price support and export activities;
- Suspected violations of anti-trust and conflict of interest laws; and
- Improper payments to government contractors.

Mr. Naughton has lectured at numerous seminars and training programs sponsored by organizations such as George Washington University, the President's Council on Integrity and Efficiency (PCIE), the Federal Executive Institute, the National Academy of Public Administration, the Association of Federal Investigators and the Association of Government Accountants.

Mr. Naughton is a member of the bar in Iowa and the District of Columbia and holds a CPA certificate in Virginia. He serves on the Government Accounting and Auditing Committee of the Greater Washington Society of CPAs.

He was awarded the Combat Infantryman Badge, Bronze Star and Purple Heart with Oak Leaf Cluster for military service. Other awards and recognition include the Alumni Distinguished Service Award, Drake University and the Public Service Award, Association of Federal Investigators.

While attending college and law school, Mr. Naughton operated a 230 acre farm near Sioux City, Iowa.

Mr. HORN. Well, we need to pursue some of these in the discussion period. But before moving to Mr. Harper, I was interested—I was here at the time, but I didn't realize it. You note that Mr. Gore's report on reinventing government in September 1993, you say, "Among other things, that report expressed dismay about the amount of money being spent on staffs of the GAO and the Inspectors General, although graciously conceding, "not all of this money is wasted." Then you say, "They complain that the IG staffs often develop adversarial relations with agency managers who break rules."

And I guess my attitude is: So what else is new? But I really appreciate that very thorough background on history. And it is fascinating that you had all of this opposition in Congress, all of this opposition in the administration. It didn't matter which party it was.

And Mr. Harper, who I have known for 30 years, I want you to know, Ed, that he treated you as if you were a white swan on a muddy lake. And he had great praise for you being a little light sitting out there for truth and justice in the Reagan administration.

Mr. NAUGHTON. Mr. Chairman, if I could comment. I don't believe we ever had any really significant overt opposition in the Congress to the 1978 act. There were six people, of course, who voted against it, but basically we were careful to see that the legislation did not get to the authorizing committees where people had their pet programs that they didn't want looked at.

The Government Operations Committee is free, to some extent, of that conflict of interest, and HEW was an agency where they have so many diverse programs that the Parliamentarian couldn't send it anywhere else but the Government Operations Committee. And that is one of the reasons it was first.

Mr. HORN. Yes. Well, thank you.

Ed, if you don't mind standing, raising your right hand.

[Witness sworn.]

Mr. HORN. The clerk will note Mr. Harper agreed.

Ed, go ahead.

Mr. HARPER. Thank you, Mr. Chairman, distinguished members of the panel. It is nice to see Jim Naughton again after all of these years. I am pleased to have the opportunity to appear here today to present my personal views with respect to the program. If I may, I will submit my written testimony and summarize it in the allotted 5 minutes.

Mr. HORN. Yes. Automatically they are all put in the record the minute we introduce you.

Mr. HARPER. OK. As a senior corporate officer who's worked with auditors and sometimes investigators to protect the shareholders' interest, I was pleased to have the opportunity to lead the inspectors general program early in President Reagan's first term. The President-elect was determined to balance the budget and felt that the elimination of fraud, waste, and abuse would make an important contribution to that end. He felt that the inspectors general program in the civilian agencies begun in the prior administration had been a failure. It had not produced results. Its failure, he felt, came from three sources: One, some of the appointees were weak

professionally; two, they were not given enough support from the top; and three, their mission was confused and misunderstood.

The problems President Reagan addressed, however, are not problems that can be fixed once and then forgotten. Let me talk first about the constitutional issue. The President felt it was essential to terminate all of the incumbent IG's to make the program effective and to settle the constitutional separation of powers issue as to whether or not the inspectors general were members of the executive or legislative branch of Government.

I knew that firing the inspectors general en masse would generate a firestorm of criticism, and they would be accused—we would be accused of politicizing a program that was supposed to be above politics. In anticipation of this reaction, I had the President's commitment that we would only appoint people whose integrity was beyond reproach and who were outstanding professionals.

President Reagan fired the inspectors general, and the firestorm came. The constitutional issue of separation of powers from a practical point of view was resolved. The inspectors general were, are, a part of the executive branch, subject to Presidential dismissal and not agents of the Congress.

While we are dealing in practicalities, every time an IG's post becomes vacant in every administration, I am sure that the senior White House political adviser says, "I want to appoint someone to this high-level post who is active in the campaign." This kind of problem requires continuous attention. It is easy and wrong to compromise on the qualities of the persons appointed to the IG's post. The chances of getting the kind of people we need as IG's is enhanced if a single person is given a clear responsibility to achieve high-quality people in those posts, such as the Deputy Director of the Office of Management and Budget.

President Reagan did not compromise on quality. June Gibbs Brown being here, and her subsequent appointments after being terminated as inspector general of Interior, being appointed to NASA, being appointed to IG of Defense, and President Clinton's appointing her to the HHS position are clear evidence that quality was maintained and, I think, enhanced.

Top-level support. A second concern the President addressed was the institutionalization of top-level support for the inspector general program by creating the President's Council on Integrity and Efficiency in the Government. The Council has provided a forum by which the inspectors general could coordinate efforts on governmentwide functions and to deal with the delicate issue of accusations of misconduct by an IG.

The third, just briefly, as we were chopping away at the budget in the Reagan administration, one of the things we did was to increase the inspectors general budget.

And, finally, clarity of mission. When a staff of auditors and investigators is put together, there is an implicit assumption that their mission is understood by all. Implicit assumptions are prone to confusion and misunderstanding. Many at both ends of Pennsylvania Avenue are confused as to whether the inspectors general were friend or foe.

Let me conclude by suggesting what I think are some reasonable expectations that may get the IG's off to the right foot with agency

heads, Members of the Congress, and the President. The inspectors general should expect: One, they will be treated by the agency head as a vital part of the agency's head management team, but independent of the agency's executives, and they will report directly to the agency head. Two, that they will be free to aggressively and professionally audit and investigate agency operations and Government-funded programs with the objective to root out fraud, waste, and abuse. Three, they will be called upon to report to the Congress without prior clearance of their testimony, but they are not agents of the Congress. And, four, they will get support from the Office of Management and Budget.

The agency head should expect that the inspectors general, one, will act as a part of the management team, but will not be under the direction of any operating official short of the agency head, and I mean that both formally and informally. In reality, they have got to report to the agency head. Two, they are going to be an important force in improving the management of the agency. Three, they will pull no punches in their investigations and audits. Four, they will act in an appropriately confidential manner, recognizing their final reports are public documents. Five, they will investigate criminal activity and work with the Department of Justice to achieve prosecutions.

And, the President should expect that the inspectors general, one, will do well if he has the discipline to appoint only the very best. Two, they will aggressively audit and investigate all operations within their jurisdictions. Three, they will work in an appropriately confidential manner, again recognizing that reports are public. It is not a game of "I gotcha." And four, they will work with the Department of Justice to secure prosecutions and, I think to Mr. Naughton's point, to get payment back to the Government.

And, the Congress should expect that the inspectors general, one, aren't agents of the Congress and two, will vigorously do their job.

Finally, the Congress should do as it is doing at this hearing, investigate the effectiveness and the mission of the inspector generals program to make sure it is effectively doing its job to eliminate fraud, waste, and abuse in Government operations.

Thank you, Mr. Chairman.

Mr. HORN. Well, I thank you. That was an immensely helpful statement, and it gives us not only some of the history, but some of the real problems with which we need to deal.

[The prepared statement of Mr. Harper follows:]

Expectations for the Inspectors General

Remarks by

Edwin L. Harper, Ph.D.

Chief Financial Officer, American Security Group
before

House Committee on Government Reform and Oversight

April 21, 1998

Mr. Chairman, members of the Committee, I am pleased to have the opportunity to appear here today to present my personal views with respect to the Inspectors General program.

Over the years I have had the opportunity to serve as a senior officer in several private sector corporations. In these positions I have had a fiduciary responsibility to the company's shareholders. In fact when I have served as Chief Financial Officer I have worked regularly with internal and outside auditors and sometimes investigators to protect the shareholder's interests. In a number of instances I have led teams investigating frauds against companies in addition to my more normal corporate efforts to eliminate waste and inefficiencies in operations.

Because of my experience with the Office of Management and Budget and its predecessor agency I was asked to serve on president-elect Ronald Reagan's transition team in November 1980. The President-elect was determined to balance the budget and felt that the elimination of fraud waste and abuse would make an important contribution to that end. He felt that the Inspectors General program in the civilian agencies begun in a prior Administration had been a failure . . . it had not produced results.

Its failure he felt came from three sources: 1) some of the appointees were weak professionally, 2) they were not given enough support from the top, and 3) their mission was confused and misunderstood. I feel we successfully addressed these problems early in President Reagan's first term, and we did get results.

The Inspectors General developed tracking systems that enabled them to report on the billions of dollars which were saved as a result of their actions directly through program changes they recommended.

The problems President Reagan addressed, however, are not problems which can be fixed once and then be forgotten, because the problems require continuous maintenance.

Let me outline what President Reagan did to address the problems and then elaborate on why continuous maintenance is required.

Frankly, I had never focused on the Inspectors General program when I joined President Reagan's transition team in November of 1980. When the President-elect asked me to take on the responsibilities as Deputy Director of the Office of Management and Budget, I was informed by Ed Meese, the President's Counsel, that the President had decided to fire all the incumbent Inspectors General as one of his first acts as President, as he felt this was essential to make the program effective and to settle the constitutional / separation of powers issue of whether the Inspectors General were members of the executive or legislative branch of government.

I knew that firing the Inspectors General en mass would generate a firestorm of criticism and that we could be accused of politicizing a program that was supposed to be above politics.

In anticipation of this reaction when I agreed to become Deputy Director of OMB and take on the Inspectors General program I got Meese's and the President's commitment that we must only appoint people whose integrity was beyond reproach and who were outstanding professionals, and that some of the incumbent Inspectors General would be considered for re-nomination.

President Reagan fired the Inspectors General and the firestorm came, but one issue looming over the immediate dismissal of the Inspectors General was the Constitutional issue of separation of powers. Some had argued that the Inspectors General were agents of the Congress and could not be dismissed by the President. While there was anger, there was no concerted move to challenge the President's right to dismiss the Inspectors General. Thus, from a practical point of view it was determined that the Inspectors General were a part of the executive branch, subject to Presidential dismissal, and they were not agents of the Congress, protected from Presidential control.

And while we are dealing in practicalities, the White House Political Advisor's view was "prove to me that you could not find people of highest integrity and professional ability who were active members of the Reagan election campaign." I did ask White House personnel to find me the best and the brightest, but I also went to outstanding career civil servants, and asked them not only about the performance of the incumbent Inspectors General but asked them for additional candidates.

Meanwhile, HHS Secretary Designate, Richard Schweiker, felt that fraud was a particularly big problem in his department went out on his own and found an outstanding FBI agent with an excellent track record of fraud investigations. My initial qualms about the Secretary's initiative were put to rest when I got to know former Special Agent Dick Kusserow and his record. Kusserow proved to be one of the most aggressive and successful Inspectors General in recent times.

In fact, a number of the incumbent Inspectors General proved to be outstanding choices whom President Reagan nominated. These included June Gibbs Brown who remains an Inspector General. She was appointed by President Carter as Inspector General for the Department of Interior, President Reagan appointed her Inspector General of NASA and later at DOD, and President Clinton appointed her Inspector General at HHS. Some of the other outstanding re-appointments included Frank Sato and Chuck Dempsey.

It is a continuing struggle to make sure that high caliber individuals will be appointed to the Inspector General slots. It is easy and wrong to compromise on the qualities of the persons appointed Inspector General. If it is clear that there is one individual with ongoing responsibility for the Inspectors General program who is responsible for getting the highest caliber possible individuals, the chances of getting the kind of people this program requires is enhanced.

The second concern President addressed was the institutionalization of top level support for the Inspectors General program by creating the President's Council on Integrity and Efficiency in Government (PCIE). As Deputy Director of OMB I chaired the Council which included all of the Inspectors General plus the Assistant Director of the FBI for Investigations. The Controller General was invited to serve as a member, even though he runs the GAO which is clearly accountable to the Congress. We did this to make it clear that we had nothing to hide from the Congress and that we were anxious to involve every resource of government to root out fraud, waste, and abuse. The PCIE provided a forum by which the Inspectors General could coordinate efforts on government-wide functions, such as the use of government data bases in a manner consistent with respect for the rights of individuals to privacy, but in a manner that promoted the government's ability to protect itself from fraud and deadbeats. It also gave the Inspectors General the ability to support each other with resources as appropriate.

(One tactical indication of top level support which we gave to the Inspectors General program was to increase the Inspectors General budgets while we cut virtually every other controllable budget in the executive branch.)

The PCIE also helped deal with the difficult problem of an Inspector General's office being accused of misconduct. It gave us a forum to investigate accusations using Inspectors General and the resources outside of the accused agency. I was pleased to see that recently President Clinton codified in an Executive Order procedures similar to those we put in place in the early 1980's.

When a staff of auditors and investigators is put together there is an implicit assumption that their mission is understood by all. Implicit assumptions are prone to confusion and misunderstanding. The Congress has as one of its basic Constitutional responsibilities the investigation of government operations;

thus it is an easy leap to the assumption that the Inspectors General being auditors and investigators are an extension of Congressional activity. The President has a Constitutional responsibility as Chief Executive Officer to manage the Executive Branch and its employees; thus, it is not much of a leap to assume that Inspectors General are there to help the President run the Executive Branch. Meanwhile, the professionals of the Inspectors General world come by their profession to have a strong sense of independence, and when they are being pulled one way by the Congress and another by the President they can find their mission confusing. In this mix it is not surprising that some Cabinet Secretaries are confused as to whether the Inspectors General are friend or foe.

Let me conclude by suggesting what I think the mission of the Inspectors General should be and reasonable expectations which members of the Congress, the President and Cabinet Secretaries should have for the Inspectors General.

The Inspectors General should expect that they

- will be treated by the agency head as a vital part of the agency head's management team, but independent of the agency's executives; will report directly to the agency head

- will be free aggressively and professionally to audit and investigate agency operations and government funded programs with the objective to root out fraud, waste, and abuse wherever it may be found

- will be called upon to report to the Congress without prior clearance of testimony, but that they are not agents of the Congress.

The Agency head should expect that the Inspectors General

- will act as a part of the management team, but will not be under the direction of any operating official short of the agency head.

- will be an important force in improving the management of the agency.

- will pull no punches in their investigations and audits.

- will act in an appropriately confidential manner, recognizing that their final reports are public documents

- will investigate criminal activity and work with the Department of Justice in prosecutions.

The President should expect that the Inspectors General will

aggressively audit and investigate all of the operations within their jurisdictions, with their objective being to rid their agency and programs of fraud, waste, and abuse.

report the results of their efforts to their agency head in a confidential manner which leads to a constructive course of action.

when their work indicates criminal misconduct, work with the Department of Justice to secure convictions.

The Congress should expect that the Inspectors General

are not agents of the Congress

will vigorously do their job.

Finally, the Congress should do as it is doing at this hearing: investigate the effectiveness and mission of the Inspectors General program to make sure that it is effectively doing its job to eliminate fraud, waste, and abuse in government operations.

Mr. HORN. We now have one of our regular witnesses. I don't know—I was trying to think of the contrarians in the stock market. Dr. Light of the Pew foundation is sort of a contrarian in terms of public administration. He looks where other people think is the obvious and finds that it isn't obvious, and he finds the things that we should be coping with and maybe in our optimism have not coped with.

But last week, Paul, I want you to know that one witness voluntarily said somebody should read "Thickening Government" around here. And I think that is one of his classics. He does public administration with a sense of humor, and welcome this morning.

Mr. LIGHT. Somebody should read "Thickening Government." I used this song before: You know you are in trouble as an author when you find your books on remainder tables of books for a buck marked "make us an offer."

I am here not, of course, as a representative of the Pew Charitable Trust, but as a private citizen and scholar. It is a delight to be before you. This is a particularly important moment for these hearings for three reasons: No. 1, I think the downsizing of Government is stretching agencies to the limits. There is a lot of activity under way beneath the surface of the downsizing that I believe is exposing agencies to enhanced vulnerabilities in their increasingly complex and confusing relationships with contractors and grantees at the price of bundling of megacontracts being one example.

No. 2, the Government Performance and Results Act is actually getting some traction within agencies. I believe that the recent partisan argument here on Capitol Hill about GPRA is actually a sign that GPRA is taking hold. You wouldn't fight about it if it wasn't making a difference.

No. 3, as you know from the Pew center, for the people in the press, surveys of trust in Government, trust in Government is slowly moving upward, no doubt due to the activities of this committee in trying to solve the Y2K problem.

I am fond of saying—I love this statement—that if this is as good as it gets, when it is as good as it is, we have got a problem for the future, because it won't always be as good as it is economically in this country. If we can only push trust in Government up a few points during this rosy period, we are all going to need to buckle down when and if things turn sour.

Let me give you a broad overview of my statement. As I said, some of my conclusions are tentative. I am back in the field talking to the inspectors general. They are wonderful and forgiving of my accountability questions.

My main point in the statement is that I believe that the IG's are actually stuck at this moment in time. They are unsure about where they stand. And the big issue of GPRA is they have not taken a strong position as to what they believe they should be doing. They are only allowing them to tell them what they should be telling them, and "only me" doesn't have much of an opinion about what the IG should be doing beyond doing their own performance plans.

I believe that part of the reason the IG's are stuck is because we have a leadership problem. There is not a strong hand. There are eight agencies right now in the IG offices. I think the IG's are real

sensitive subsequent to the experiences surrounding the Treasury IG and the tarnishing of their reputations up here surrounding some signal events, including the activities of the Transportation IG on the way out of office and issues surrounding ValuJet.

I believe we have four problems that are worth looking at. Most importantly is the recruitment. While I believe that there have been strong appointments over the last 10 years, I think they are more accidental than intentional. We get very good people appointed, then we get some very bad people appointed. And I think it is part of a randomness in the White House appointments.

The process began in the late 1980's after Fred Harper and Wright left OMB and continued into the current administration, where we have had a virtual revolving door in the Office of Presidential Personnel, five directors for sure, possibly seven.

I believe strongly we ought to manage a new appointments process for inspectors general, and I would actually urge the subcommittee to consider throwing CIO's and CFO's into that appointments process. These are too important positions to risk on the momentary whims of the White House personnel process that is poorly staffed, poorly directed, and led by a revolving core of directors.

I will talk a little bit here about the independence. I am a strong supporter for an inspector general, Lord help me, it is sickening, for inspections. The IG's want to do this sometimes, but they are reluctant to dedicate staff to inspections, and, in some cases, rightly so. They have tough choices, but I would like to urge them statutorily to do so.

And finally I will talk a little bit about advisability. I do believe, as I say here, that I have broken the IG code after reading semiannuals off and on over the years. I think I know what they are saying, something direct and of significant warning to Congress, but I am not sure of your comments now. As I note here, and in our examination of IG testimony on Capitol Hill, the IG's are fading on Capitol Hill. They are not as frequent a witness. We need to figure out some way to introduce your colleagues to the inspectors general and some way for the IG's to communicate more directly with your colleagues.

I will be delighted to answer any questions, and I am sure my lovely spouse in Philadelphia will enjoy the confirmation by the distinguished chairman of my contrariness.

Mr. HORN. Thank you. We will have her as a witness under oath some day.

[The prepared statement of Mr. Light follows:]

I am delighted to appear before the Subcommittee today to provide an update on my research on the federal Inspectors General (IGs). I am only now culling through new data on how the IGs have fared over the past five years, but will shortly turn to a full-scale revision of my book, *Monitoring Government: Federal Inspectors General and the Search for Accountability*. Because I am still sorting through the data, I can only provide a general overview of my findings and offer the following testimony in the spirit of helping this Subcommittee and its fine chairman set the agenda for future conversation.

Given the sales figures reported by the Brookings Institution, I must assume that most members of the Subcommittee have not seen the book. Briefly summarized, the book tells the story of the origins of the IG concept and its progress, dare one say institutionalization, over the years following passage of the 1978 Inspector General Act. The book was based on detailed interviews with the IGs, the authors of the original statute, its opponents, and a host of other sources. It was also based on fairly extensive analysis of secondary materials, including semi-annual reports, Office of Inspector General (OIG) organization charts, IG workload data, congressional hearings, and Office of Management and Budget tracking surveys. After pulling it all together, I reached the following conclusion in 1993:

After all the statistical accomplishments are totaled and all the staff and budget increases reviewed, government appears no more accountable today than before the IG Act. The IG savings and conviction totals continue to rise year by year with no decline in sight. The IGs have not done their job poorly, but they may be doing the wrong job—putting too much emphasis on compliance and not enough on performance and capacity building.

Five years later, I would leave the paragraph mostly unchanged. But for 1996, when the government shutdowns drove statistical accomplishments down for a moment, the IGs continue to report yearly records in the hunt for fraud, waste, and abuse, suggesting that the war on waste is far from over. Although the IGs continue to demonstrate remarkable toughness in ferreting out fraud, waste, and abuse after the fact, they have yet to embrace a methodology, let alone an ethic of prevention. Far too many of the IGs believe that creating the “visible odium of deterrence” is the sole weapon in improving performance.

Not all is negative, however. I would add that many of the IGs have worked hard to strike a more appropriate balance between before-the-fact prevention and after-the-fact monitoring, and that almost all accept the basic premise that performance is the ultimate bottom-line. The IGs have also been extraordinary willing to challenge themselves with new ideas. They have created their own Internet website and a new *Journal of Public Integrity* as mechanisms for sharing information and innovation. And they are even willing to invite a curmudgeon like myself into occasional conversations about the future.

Nevertheless, my current view is that the IGs are not changing fast enough. If I had to make a single statement about their current condition five years after *Monitoring Government*, it would be that the IGs are mostly standing still as the federal government is undergoing the most significant change in modern times. At the risk of over-generalization, the IGs seem to be hunkered down against the winds of change, hoping that someone will take the lead in telling them just how to react to the onslaught of pressure for higher performance. Simply put, they have been slow to react to the signal issues of the day.

I am particularly troubled that the IGs have yet to declare themselves on the Government Performance and Results Act. They hardly need to wait for OMB to decide, if, in fact, OMB can make a decision given the constant turnover. The IGs only need to read their own statute. It is actually a remarkably slender, easily understandable document, a model of legislative clarity. It clearly invites them to be proactive in attacking fraud, waste, and abuse at its source: pending rules and legislation.

I believe that the original sponsors of the concept would be delighted to see the IGs take a strong position on shaping the federal government's response to GPRA. This does not mean that IGs should merely present their own performance plans to their agency heads. Nor does it mean that they should only be involved in evaluating the integrity of the data presented in support of agency plans. I believe that the core statute clearly instructs the IGs to participate in the actual design of the program indicators. They should weigh in on the construction of the measures, validate the data, and credential the final reports to Congress. If they do not see that invitation in the statute, and I would be happy to point out the specific language, I strongly encourage this Subcommittee to remind them in the clearest possible statutory language.

Beyond urging a more proactive stance on GPRA, let me offer a random walk through controversies that beset the IG concept at twenty years. My main concerns are with the presidential appointments process, the continued participation of some IGs in the presidential award and bonus system, the declining fortunes of the inspection/evaluation function, and what appears to be a troubling decline in congressional interest in IG testimony.

Recruitment

Let me start with the recruitment process. Notwithstanding the many talented individuals who current serve as IGs across government, I believe the presidential recruitment process has devalued the importance of the Inspector General position as a significant appointment. The devaluation began in 1989 under a Republican president and continued in 1993 under a Democrat, but was driven in both administrations by what I believe is a failure to understand the importance of the post. For both administrations, an IG post was just another post to fill.

Although the problem has been exacerbated in the current administration by turnover at the Office of Presidential Personnel, which has seen five directors in five years, the general trend has been to fill IG posts more at random than with care. The result has been some stunningly good

appointments, as in June Gibbs Brown's choice to head the Health and Human Services OIG, and some remarkably bad choices, as in the Treasury Department debacle. Lacking a clear signal on just what might make for a good IG and facing unrelenting pressure to find good people for an ever-growing inventory of plumb jobs, the presidential personnel process has simply not given the IG post sufficient attention.

I believe the answer to the problem is to create a new appointments process that separates the IGs from the traditional presidential review process. Under my proposal, Congress and the president would jointly appoint a standing review panel that would maintain a standing list of potential nominees for all presidential and agency-appointed IG vacancies. Presidents would obviously retain their constitutional authority to nominate anyone they wish for an IG post. But if constructed carefully, such a standing list would eventually become a compelling force in the appointments process. One could also imagine similar lists for other key management posts, including chief financial officers and chief information officers. The list could be easily maintained by an Office of Federal Management should Congress and the president eventually create such a unit.

Awards and Bonuses

Let me continue with the participation of some IGs in the presidential bonus system. As this Subcommittee knows, presidential awards and bonuses are determined by department secretaries and agency heads. Although many IGs voluntarily exclude themselves from such an obvious source of implied conflict of interest, I am told that some do not. Congress should make clear that such participation, whether for IGs or their subordinates, constitutes a breach of independence. It should be prohibited in statute. Should Congress do so, it must provide an alternative mechanism for rewarding performance. Such a new IG award and bonus system could be administered by OMB or the new Office of Federal Management, but needs to be clearly distanced from departmental and agency leadership. It is one thing for a secretary or agency head to congratulate an IG for a job well done, quite another to dangle a \$10,000 or \$20,000 award before a quasi-independent officer of government.

Such an award and bonus system could be linked to a new governing process for investigating and resolving allegations of IG wrongdoing. No one can be satisfied with how the IG community handled the allegations regarding the Treasury Department IG. The IG review process was not only late, it was irrelevant to the final resolution of the case.

Admittedly, the issue should never have been placed on the IG docket. The IG should have been removed by the Treasury Secretary at the first confirmation of wrongdoing by the General Accounting Office. Failing that, OMB should have used every available lever to force the issue to immediate closure. Neither institution discharged their responsibilities properly. That the Treasury IG was allowed to serve even a day after the GAO report was shocking. Nevertheless, once these failures to decide were made, the IGs should have moved quickly to their own position. That they were unable to do so speaks volumes about the weakening of the IG community as a collective force for the highest standards of conduct.

The IGs need to be reminded from time to time that the weakening of any single OIG, no matter how small or insignificant, no matter whether led by a presidential appointee or an agency appointee, is a weakening of all OIGs. They either hang together, to quote Benjamin Franklin's famous maxim, or they shall hang separately. I do not know quite how to rebuild the IG community as a force to reckon with, whether in demanding high quality appointments or disciplining wayward colleagues. What I do know is that the IGs are isolated from each other at a time when collaboration is essential. And what I also know is that OMB is no longer exercising the kind of leadership needed to focus the individual IGs on the broader needs of government. As a result, the IG community is less than the sum of its parts.

Inspections and Evaluation

I have long believed that inspection and evaluation should be a central function in every OIG. Most IGs do not share my enthusiasm. Many see inspection and evaluation as a waste of precious staff resources that could be used for investigations and audit. Much as I can appreciate the challenges of spreading limited staff over an already wide agenda, I believe that inspection and evaluation is essential to the prevention of fraud, waste, and abuse. By their training, auditors and investigators tend to focus on catching wrongdoing after the fact. If the federal government is to bring the war on waste to an eventual end, the IGs must learn how to analyze program weaknesses in search of vulnerabilities.

They must also be willing to alert Congress and the president in clear and certain terms when a proposed bill or regulation is likely to create added vulnerability. Such warning does not compromise OIG independence, as some IGs argue. To the contrary, it enhances the OIG impact in actually winning the war on waste. I believe that Reps. Brooks and Fountain would be shocked to hear about IGs who hid behind their independence in refusing to forewarn their departments and agencies or Congress about impending errors. To its credit, the audit profession has struggled with service and accomplishment reporting as a tool for just such performance accounting. But auditors cannot do the job alone. Although the IGs and I disagree sharply on this point, I have come to the reluctant conclusion that we need to thicken the OIGs by creating a separate Assistant Inspector General for Inspection to undertake the kind of long-term analysis that would aid the prevention of fraud, waste, and abuse before it occurs.

To the extent this Subcommittee could figure out a legislative method for cloning the Health and Human Services OIG, I encourage you to do so. That OIG knows how to strike the balance between prevention and compliance, between service to the department secretary and to the American taxpayer. It is one of the most professional units I have ever encountered in government, federal, state, or local, and has an ethic of high performance that could be modeled in any unit, be it staff or line.

As long as I am on the subject of clarity, let me also note that the IGs have made little progress making their semi-annual reports accessible to Congress or the public. Having been the Senate Governmental Affairs Committee staffer charged with reading every semi-annual report during my

tenure in the One-Hundredth Congress, I believe I broke the IG code on what constitutes a significant warning. I also came to admire the tremendous work that goes into producing one of those reports. Nevertheless, the IG reports are virtually unreadable. The answer perhaps is to drop back to a single annual report that would anchor agency-by-agency accountability assessments, with regularly scheduled summary updates on audit and investigation activity that can be found in the appendices of the semi-annual reports.

Legislative Interest

An IG's success depends on two key relationships. One is with the department or agency head. Since most of what IGs report is relatively routine, an IG must have the confidence of the secretary to assure appropriate attention. The other is with Congress. Congress is both the guarantor of an IG's independence and a key consumer of IG materials. Unfortunately, my sense is that most members of Congress do not have a clue as to why the IGs exist and what they do. My own count shows that the IGs hit their peak in congressional attention in 1993-1994 with 176 hearing appearances, most of which occurred here in the House at the subcommittee level. Their activity declined somewhat in 1995-1996 to 133 appearances, and dropped suddenly last year to just 25 appearances. At the current pace, the IGs will appear fewer times in the One-Hundred-and-Fifth Congress than at any time since passage of the 1978 Act.

There are several possible explanations for the incredible disappearing Inspectors General. A first explanation is that many members of Congress are new. A significant majority of the House has been in office four terms or less. I know of no legislative orientation program, whether here in Washington or in Boston, that introduces members to the IGs. This Subcommittee could do the IGs a significant favor by arranging the needed introduction, whether through a dear colleague letter or more formalized conversations between committee and subcommittee chairs and individual IGs.

A second explanation is that the current administration has been less than effective in filling vacancies in IG posts. At my last count, there are seven vacancies in the presidentially appointed posts, a troubling total given the importance of these jobs. Authorizing committees can hardly be faulted for not inviting IGs to testify when there are no IGs to invite. This is not the place to revisit the problems with the presidential appointments process. As you know, I believe there are just too many presidential appointees. The Office of Presidential Personnel cannot keep up. I believe that the new appointments process outlined above would address the problem, raising the bar for appointment and accelerating the process.

A third explanation is that the behavior of several recent IGs, including the immediately past occupants of the Treasury and Transportation posts, tarnished their colleagues' reputations by association. I do not question an IG's authority to "go public" with particularly serious allegations of the kind raised by the Transportation IG regarding the airworthiness of start-up carriers. There are times when nothing else will work. What I do question is the decision to go public *before* all available statutory authorities are exhausted. That means using the seven-day letter for its intended purpose: to alert Congress and the president to egregious vulnerabilities. If the Transportation IG's

sense of impending doom at ValueJet did not call for a seven-day letter, I do not know what would. It could give the families of the victims cold comfort to read of the IG's worries about ValueJet in an opinion piece on the Monday after the accident when the IG never used her most effective and visible tool beforehand. The IGs have long described the seven-day letter as a holstered weapon that is best shown, but not used. My sense is that the seven-day letter has been in the holster so long that it has rusted into place. It should be pulled out, reloaded, and fired from time to time, and not just to alert Congress that an OIG's budget is in jeopardy.

Before turning to the Subcommittee's questions, let me conclude on a simple note. Being Inspector General is still one of the toughest jobs in government. There is no way to legislate courage or integrity, nor is there any curriculum that would teach an IG how to serve so many masters effectively. I believe IG performance starts and almost ends with the recruitment of talented individuals for office.

The thing I admire most about the Reagan IG selection process is that it conveyed a sense of prestige and import to the choice. People who were selected to stand for nomination knew they were taking a significant turn in their career. That is no longer the case. Being nominated for IG is more an accident than a deliberate choice. Again, much as the process has brought us some very talented individuals, it has devalued the coin of the realm. I believe the problem is serious enough to warrant an entirely new appointments process and can make the case that presidential neglect warrants similar procedures for other key administrative jobs.

Mr. HORN. Now we go to the—one of the favorite witnesses of this subcommittee, which is the U.S. General Accounting Office, part of the legislative branch. And we will hear from David L. Clark, the Director of Audit Oversight and Liaison Group, Accounting and Information Management Division of the General Accounting Office.

Mr. Clark.

Mr. CLARK. Thank you, Mr. Chairman. I am pleased to be here today to discuss the history and evolution of the IG concept. I have some summary remarks I would like to make from my prepared text. And I would also like to touch on one of the points that Senator Collins made earlier.

Ten years ago, GAO testified on the results of the IGs' first 10 years in operation. At that time we said that the IG's had had a significant amount of success in accomplishing the purpose for which they were established; that is, preventing and detecting fraud, waste, and mismanagement, and improving Federal programs and operations. The IG's have also been successful during their second 10 years of operation in accomplishing that same purpose.

In fiscal year 1996, for example, IG's reported investigative recoveries totaling about \$1 billion, and successful prosecutions of over 12,000 criminal cases when you add in the Postal Service IG. Investigative recoveries alone were nearly equal to the IGs' total annual budget of about \$1.1 billion. Recently, the larger IG's across Government have also been engaged in broad-scale efforts, such as conducting or overseeing agency financial statement audits and determining whether agencies' financial management systems comply with Federal accounting standards, Federal financial systems requirements, and the U.S. Government's standard general ledger.

These broad-scale efforts have identified many control weaknesses and financial management systems breakdowns and have directly contributed to GAO's ability to audit the consolidated financial statements of the Federal Government. Broad-scale efforts such as these are largely the result of explicit IG requirements in the Chief Financial Officer's Act of 1990 as expanded by the Government Management Reform Act of 1994 and in the Federal Financial Management Improvement Act of 1996.

Other recent legislative initiatives to improve Government operations, while not containing explicit roles for the IG's, nevertheless offer excellent opportunities for IG's to substantially influence the way agencies operate. These legislative initiatives include, in particular, the Government Performance and Results Act of 1993, the Paperwork Reduction Act of 1995, and the Clinger-Cohen Act of 1996.

Our sense, Mr. Chairman, is that the continued success of the IG concept may ultimately hinge in large part, on how others, including the Congress, see the IG's role under such legislative initiatives and how well the IG's are willing and in a position to carry out that role.

Recently, Mr. Chairman, we began a comprehensive review of the IG concept at your request and at the request of the chairman of the full committee. Our first project in that review was a survey of the IG's efforts to develop their own strategic plans. As you are

aware, IG's are not specifically required to develop their own strategic plans, but have generally taken the initiative to develop such plans consistent with the provisions of the Government Performance and Results Act. We have completed our survey. We have provided the IG's with a draft of our report for their comment, and we plan to issue our final report in the near future.

Senator Collins this morning offered a number of suggestions or thoughts, one of which involved what she would call a systematic review of the IG's by GAO or another organization, and in an attempt maybe to preempt some of the questioning on that, I would like to make a couple of comments. First of all, IG's do undergo some form of systematic review. Fundamentally, IG's are all required to follow Government auditing standards, and they are required to follow investigative standards that are issued by the PCIE. Those auditing standards require that IG's undergo a peer review once every 3 years to look at their systems, procedures in place, and how well their work is complying with professional standards.

Strategic plans, to the extent that they are done and done thoroughly, also offer a systematic process of communication and expectation-setting on the part of Congress, agency heads, and others in terms of defining what they want IG's to do, and for IG's to say what would be the outcome of their work.

GAO, as you know, is required under law, and if requested by the Chair of a standing committee, to undertake any review, and we have, in fact, done that. Senator Collins mentioned that in the case of the Treasury IG, it was not a pervasive problem. In fact, GAO was asked by Senator Collins' committee to look at the work of the Treasury IG, particularly in the contracting area, and we did that. And we are in a position, whenever Congress feels that it has a specific issue to look at, to do that. This is all by way of saying, Mr. Chairman, that we would not endorse or support the idea that GAO be made the regular programmatic review of the IG's work.

That concludes my summary.

Mr. HORN. Well, thank you very much for that helpful statement.
[The prepared statement of Mr. Clark follows:]

Mr. Chairman and Members of the Subcommittee:

We are pleased to discuss the evolution of the work of the inspectors general (IG). This oversight hearing by the Subcommittee provides an excellent opportunity to review the IG concept established by the Congress through the Inspector General Act of 1978 and to focus on the IG community's important efforts.

Two decades ago, the Congress created IGs throughout government as a result of growing reports of serious and widespread internal control breakdowns. They were principally charged with detecting fraud, waste, and mismanagement in agencies' programs and operations; conducting audits and investigations; and recommending policies to promote economy, efficiency, and effectiveness.

In the intervening years, IGs have reported success in carrying out this mission through billions of dollars in savings and cost recoveries and thousands of prosecutions of criminal cases resulting from their work. For example, in fiscal year 1996, IGs reported investigative recoveries totalling about \$1 billion and successful prosecution of over 12,500 criminal cases.

Since passage of the IG Act, the Congress has called for more efficient and effective management of government programs through a range of legislative initiatives that effect the way agencies operate. For example, financial management reform is called for by the Chief Financial Officers (CFO) Act, as expanded by the Government Management Reform Act.

The enactment of statutes such as these has not only established a framework for broad management reforms by agencies, they have also affected the IGs' role. In some cases, the IGs were provided key new responsibilities, and in other instances, they were given the opportunity to substantially influence the way agencies operate programs.

Because of the changing roles brought about by these legislative mandates, you and the Committee Chairman have asked us to review aspects of IG operations. We began this effort with a survey of the IGs' participation in strategic planning, which I will discuss today. Also, we have worked with the Committee staff to identify other areas that may be studied. This testimony will discuss the IGs' role as it has evolved and some of the forces that have helped to shape the current environment in which IGs function.

THE IGs' EVOLUTION AND ENVIRONMENT

The importance of legislative underpinnings for auditing in the federal government dates back almost half a century--to the Accounting and Auditing Act of 1950, which held federal agency heads responsible for internal controls, including appropriate

internal audit. The need to strengthen this requirement became evident when, in 1976, we began to issue a series of reports on reviews at 157 fiscal offices in 11 major federal organizations. These reports indicated widespread and serious internal control weaknesses that resulted in the waste of government money through fraud and mismanagement.

We reported that federal agencies did not use their internal auditors to examine their financial operations and when they did, no action was taken on the auditors' recommendations. We also found that internal audit groups were not independent, they were underfunded and understaffed, audit efforts were fragmented among several offices, and problems found by the audits were not communicated to the agency heads. With rare exceptions, the executive agencies had not adequately monitored or assessed or reviewed their own operations and programs.

As a result, the Congress passed the IG Act of 1978. The IG Act, as amended, and similar laws centralized the leadership of most major federal agencies' audit and investigative functions under an inspector general responsible only to the agency head or deputy and having the independence needed to detect, investigate, evaluate, and report on government fraud, waste, and mismanagement. Under the act, the IGs were given authority to detect fraud and mismanagement in programs and operations of their agencies; conduct audits and investigations; and recommend policies to promote economy, efficiency, and effectiveness. The IGs are to perform audits in accordance with generally accepted government auditing standards as promulgated by the Comptroller General.

IGs at 27 departments and agencies, which are listed in attachment I, are statutorily required to be appointed by the President and with the advice and consent of the Senate. IGs at 30 other entities, which are listed in attachment II, are appointed by their entity heads and have essentially the same powers and duties as the presidentially-appointed IGs.

Currently, the 57 offices of inspector general (OIG) have nearly 10,000 audit and investigative staff and spend about \$1.1 billion annually. Of the total IG staff, about one-half are auditors, one-quarter are investigators, and the remaining one-quarter are administrative and other staff. OIGs widely differ in size from the Department of Defense (DOD) OIG with almost 1,300 staff to the Appalachian Regional Commission OIG with 3 staff.

Conducting Law Enforcement Activities

Each presidentially-appointed IG must appoint an assistant inspector general for investigations, who has the responsibility to supervise the investigations conducted. IGs use their

statutory investigative authority, and their subpoena power, to inquire into allegations of wrongdoing--both criminal and administrative. The President's Council on Integrity and Efficiency¹ has developed guidelines for IGs' investigative efforts.

The types of investigations conducted by the various IGs vary widely and often depend on the mission, programs, and operations of the agency they service. For example, the DOD IG uses the bulk of a cadre of criminal investigators to focus on frauds perpetrated against the Department by contractors and health care providers. Similarly, the Department of Health and Human Services (HHS) IG's investigations focus largely on frauds against Medicare. These and other IGs use their investigators to uncover external criminal activity impacting their departments' programs. Simultaneously, they must conduct criminal investigations of allegations of job-related crimes perpetrated by agency employees.

Most IGs also conduct, or at least supervise, agency administrative investigations--those cases where allegations of noncriminal misconduct (such as abuse of position and noncriminal conflicts of interest) by agency employees have been made. IGs use either criminal or noncriminal investigators to carry out this mission.

All IGs have the same basic investigative powers. Some IGs also have been granted limited law enforcement powers as well. These powers generally include the authority to make arrests and serve and execute federal search or arrest warrants. IGs using these additional tools have either gained these authorities through statute or through case by case deputation authority from the U.S. Marshals Service as approved by the Department of Justice. Several IGs are part of an ongoing pilot program wherein their criminal investigators are under blanket (as opposed to case-by-case) deputation authority.

Reviewing IG Operations

Over the years, in response to specific requests from the Congress, we have reviewed various aspects of the IGs' work. For example, in November 1993, we reported on actions needed to strengthen the OIGs at designated federal entities (GAO/AIMD-94-39). We recommended, for example, that those IGs develop strategic plans which (1) assess their respective entities' risks and problems, (2) describe the strategies for resolving the risks and problems, (3) discuss the OIG resources required and available

¹The President's Council on Integrity and Efficiency was established in 1981 to address common IG issues and is comprised primarily of the presidentially appointed IGs.

to implement their strategies, and (4) provide performance measures to evaluate their progress.

Most recently, at your request, we surveyed the 48 IGs at agencies covered by the Results Act to determine whether the IGs prepared strategic plans. The survey results showed that the IGs have completed strategic plans or are developing them. Also, the IGs' responses to our survey indicate that their strategic plans contain many of the elements outlined in the Results Act, such as mission statements and goals and approaches. We have advised your staff on the preliminary results of this work, and we will be reporting to you soon.

In addition, the Vice President's 1993 National Performance Review recommended changing the focus of IGs from compliance auditing to evaluating management control systems and recasting their method of operations to be more collaborative and less adversarial. In January 1994, the IGs adopted an "Inspectors General Vision Statement" that says "We are agents of positive change striving for continuous improvement in our agencies' management and program operations and in our own offices."

This was an important step in defining the IGs' broader role while reaffirming their statutory mission. The vision statement addresses ways for the IGs to work with agency heads and managers to improve program management, maximize the positive impact of the IGs' reviews, and provide recommendations to prevent problems before they occur.

MANAGEMENT REFORMS PROVIDE OPPORTUNITIES FOR IG EMPHASIS

We have long supported the IG concept and the legislation that brought the concept into reality. While not diminishing the significance of the IGs' traditional role in fighting fraud, waste, and mismanagement, we also recognize the potential for broadening the IGs' role in concert with legislative initiatives that establish a foundation requiring agencies to implement broad management reforms. Because these legislative initiatives have shaped the environment in which IGs operate, they have created new means for the IGs to achieve audit objectives and provided opportunities for the future direction and emphasis of IG efforts.

In this regard, the Chief Financial Officers (CFO) Act of 1990, as expanded by the Government Management Reform Act of 1994, gives the IGs at the 24 major departments and agencies responsibility for annually auditing their agencies' financial statements. The expanded CFO Act's objective is to identify and correct financial management weaknesses, reliably report the results of financial operations, and provide reliable information for oversight and decision-making.

The larger IG organizations across government have been engaged in conducting or overseeing financial statement audits for the past several years. These efforts have provided audit coverage and identified many control weaknesses and financial management systems breakdowns that greatly contributed to IGs' statutory mission. For example, the HHS OIG's audits of the Health Care Financing Administration's financial statements have identified billions of dollars in improper Medicare payments due to factors such as persistent fraudulent and wasteful claims and abusive billings.

This work is also key to the CFO Act's requirement that we annually audit the federal government's consolidated financial statements. We recently issued our first report to fulfill this requirement and testified on the results before the Subcommittee.² We reported, through close cooperation with the IGs, that significant financial systems weaknesses, problems with fundamental recordkeeping, incomplete documentation, and weak internal controls prevented the government from accurately reporting a large portion of its assets, liabilities, and costs.

Separate legislation, the Federal Financial Management Improvement Act (FFMIA) of 1996, requires auditors performing financial statement audits under the expanded CFO Act to report whether agencies' financial management systems comply with federal accounting standards, federal financial management systems requirements, and the U.S. government's standard general ledger. In carrying out this responsibility in conjunction with financial statement audits, IGs have found the continuing poor shape in which agencies find their financial systems. Thus, the act has opened a new avenue for the IGs to identify deficiencies in financial systems and recommend ways to strengthen controls.

The FFMIA also requires agency heads to establish remediation plans if an agency's financial management systems do not comply with federal accounting standards and financial systems requirements. The IGs are to monitor agency actions to implement these remediation plans and report to the Congress instances and reasons when agencies have not met established target dates.

Further, the Single Audit Act expanded the focus of federal oversight from a grant-by-grant examination to an overall financial audit of the state or local government or agency receiving federal funds with a specific focus on federal programs. A single audit is expected to address the states' or state

²Financial Audit: 1997 Consolidated Financial Statements of the United States Government (GAO/AIMD-98-127, March 31, 1998) and U.S. Government Financial Statements: Results of GAO's Fiscal Year 1997 Audit (GAO/T-AIMD-98-128, April 1, 1998).

agencies' overall financial statements and compliance with major federal assistance program requirements. While single audit is an efficient and less burdensome way to use auditing resources in satisfying federal accountability interests, IGs continue to have a role in ensuring that single audits adequately meet the objective of promoting financial accountability over federal financial assistance.

Also, the results of single audits can contribute toward achievement of the CFO Act's financial statement audit objectives. Since many federal funds often flow to their ultimate beneficiaries through multiple state and local entities, and because many of these amounts are subject to single audit, the results of these audits can provide information necessary for the successful completion of the required federal agency and the federal government consolidated financial statements.

Also, the Government Performance and Results Act of 1993 provides a potential new role for the IGs. While the Results Act does not give IGs explicit responsibilities, it emphasizes managing for results and pinpointing opportunities for improved performance and increased accountability. Thus, the Results Act affords IGs new opportunities to have a significant effect on improving the economy and efficiency of government programs at their agencies.

For example, IGs could provide valuable advice to agencies as they prepare and update Results Act strategic plans and performance plans and establish factors to be used for measuring performance. Our recent survey on IGs' participation in strategic planning, done at your request, showed that greater IG involvement in developing agencies' Results Act strategic plans is possible. Also, IGs are considering how best to evaluate performance measures that will be used.

The Clinger-Cohen Act of 1996 and the Paperwork Reduction Act of 1995 (1) explicitly focus on the application of information resources in supporting agency missions and improving agency performance and (2) set forth requirements for improving the efficiency and effectiveness of operations and the delivery of services to the public through the effective use of information technology. Agencies are struggling to deal with information technology issues, and we have identified the information systems modernization efforts at several agencies as high-risk areas.³ Further, widespread computer control weaknesses are placing enormous amounts of federal assets at risk of fraud and misuse.

³High-Risk Series: An Overview (GAO/HR-97-1, February 1997) and High-Risk Series: Information Management and Technology (GAO/HR-97-9, February 1997).

In the midst of implementing long-term information technology improvements and strengthening computer controls, agencies are faced with resolving an immediate situation--the Year 2000 problem.⁴ These activities present potentially new roles and challenges for the IGs.

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Mr. Chairman, this concludes my statement. I would be happy to respond to any questions that you or other members of the Subcommittee may have at this time.

⁴For the past several decades, information systems have typically used two digits to represent the year, such as "98" for 1998, in order to conserve electronic data storage and reduce operating costs. In this format, however, 2000 is indistinguishable from 1900 because both are represented as "00." As a result, if not modified, computer systems or applications that use dates or perform date- or time-sensitive calculations may generate incorrect results beyond 1999.

Attachment I

INSPECTORS GENERAL APPOINTED BY THE PRESIDENT

DEPARTMENTS

Agriculture
Commerce
Defense
Education
Energy
Health and Human Services
Housing and Urban Development
Interior
Justice
Labor
State
Transportation
Treasury
Veterans Affairs

AGENCIES

Agency for International Development
Central Intelligence Agency
Corporation for National Service
Environmental Protection Agency
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
General Services Administration
National Aeronautics and Space Administration
Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Small Business Administration
Social Security Administration

Attachment II

INSPECTORS GENERAL APPOINTED BY ENTITY HEADS

Antrak
Appalachian Regional Commission
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for Public Broadcasting
Equal Employment Opportunity Commission
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Labor Relations Authority
Federal Housing Finance Board
Federal Maritime Commission
Federal Reserve Board
Federal Trade Commission
Government Printing Office
Legal Services Corporation
National Archives and Records Administration
National Credit Union Administration
National Endowment for the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
Panama Canal Commission
Peace Corps
Pension Benefit Guaranty Corporation
Securities and Exchange Commission
Smithsonian Institution
Tennessee Valley Authority
U.S. International Trade Commission
U.S. Postal Service

(911849)

Mr. HORN. Let me pursue a few things that have been brought out by various witnesses and other people over the last several years. I am curious. We brought it up today here on the strategic plan. Should the IG's develop their own strategic plans that are filed with the agency and sent to Congress? Any feelings on that, Mr. Naughton?

Mr. NAUGHTON. Well—

Mr. HORN. Get it close to you, both of these mics.

Mr. NAUGHTON. Yes. Perhaps there is no formal requirement. I think a lot of that is done now. It is not formally filed, but I think many, if not most, of the IG's do have a strategic plan in place.

Mr. HORN. OK. Mr. Harper.

Mr. HARPER. I think it is a good idea. It is a good business practice. Whether or not it needs to be codified, I don't think so. I think it is standard practice in business for the auditing department to say, here is our plan in terms of how we are going to use our audit hours, and then confer with the CEO or the agency head asking, what are your particular concerns about vulnerabilities. So it is an iterative process. But the IG's ought to begin with a plan as to how they are going to use their resources in the coming years.

Mr. HORN. Dr. Light.

Mr. LIGHT. I think it is a disappointing device, and I think all units of government are required to produce it. It is good for the IG's to produce a GPRA strategic plan for their own use and also to experience the joys of producing such a plan in other units. I think it is a narrow interpretation of GPRA to assume that is where it ends for the IG.

My understanding is that the Office of Management and Budget believes that that is all the IG's are required to do under GPRA, and I think that is the most narrow and not a useful interpretation of the potential value added by engaging the IG's on a broader involvement in GPRA.

Mr. HORN. Mr. Clark, you mentioned the peer review. How do you feel on this strategic plan question, and what relationship would that peer review every 3 years have to do with this?

Mr. CLARK. Right now I don't believe the peer review process takes into account the IG strategic planning, but there is no reason why it couldn't. I think the peer review could look at whatever goals are set out in the strategic plan, whatever those strategies are, whatever the resource plans are, and whatever the performance indicators are that are included in the strategic plan.

Mr. HORN. You think it is a good idea for them to have the strategic plan?

Mr. CLARK. Sure. In our view, it is critically important.

I will go back to something Mr. Harper touched on. When IG's were first created, it was clear, he said, that the President's expectation for IG's was to reduce the budget, and I think that the expectations for all the IG's was fairly consistent. I don't think that is the case now.

I would imagine that when the IG's are up they are going to talk about it, but this is a copy of the IG's vision statement that was issued in January 1994. I think there were a number of reasons why the IG's decided to put this vision statement together, not the

least of which was the NPR recommendations. But I want to read something in the vision statement from the IG's:

In order to comply with the intent of the IG Act and assist in achieving our vision, we will continue to develop strategic plans for our offices that focus on the critical issues within our agencies, and that meet the expectations of our agency heads and the Congress.

You have 57 IG's. You could possibly have 57 legitimate but different sets of expectations. The strategic planning process, if done well, can help to sort through all that and to have a public airing of what all the stake holders want from the IG's work. I agree with Paul Light here that you then need to follow that up, you just can't put it out there, and there needs to be some oversight of that. Perhaps the peer review process is a systematic way of ensuring that.

Mr. HORN. Who sets up the peer review process?

Mr. CLARK. Each IG is responsible for arranging for their own peer review. I do not know to what extent the PCIE provides oversight of that process. I know there are guidelines that are issued through the PCIE for conducting the peer review. That may be a potential weakness in the peer review process, particularly if you compare it with the peer review process that is performed by public accounting firms where the SEC has an oversight role and the American Institute of CPA's has an oversight role in how the peer review process is actually conducted.

Mr. HORN. Has the General Accounting Office ever been asked to participate in these reviews?

Mr. CLARK. Not formally. Prior to 1988, there was no requirement that IG's participate in a peer review. The requirement for a peer review was put in the GAO auditing standards in 1988. In the 1980's, particularly when Chuck Bowsher arrived as the Comptroller General in 1981, he instituted a program in GAO. We called it quality assessment reviews but they really were peer reviews. We went out and performed peer reviews, I think, of about seven IG's which largely found that IG's were doing a good job. There were some suggestions there. But I think we demonstrated that that type of process can work, that it has value and it led to the general acceptance of the idea to begin requiring peer reviews in 1988. Since 1988 we have not been asked nor have we taken the initiative to evaluate exactly how well the process is working.

Mr. HORN. What is the appropriate measurement of performance for an inspector general, either by the President or by Congress? Should there be a measurement, a basic measurement? And if so, what is it? Dr. Light, you are always filled with ideas. Some think there ought to be. Some don't. I don't.

Mr. LIGHT. I think the measurement is the degree to which IG's reduce vulnerability in their departments. That is not the current measure. The current measure of IG performance is the extent to which the IG's ferret out fraud, waste, and abuse and measure it. Each year we have a new record except for fiscal year 1996, which is explained by the Government shutdowns, I think. Each year we have a new record in statistical accomplishment, but we have no measure of the reduction in vulnerability. That is a more difficult measure to create.

Are we any better at preventing fraud, waste, and abuse today than we were 20 years ago? I think the answer right now is we just

don't know. We can't tell. It's a body count war that we are waging and each year we can all congratulate ourselves on producing a new record level in the war. But overall I am not sure that any of us in this room would agree that we are winning. How you develop a crisp measure that can be audited of that, I just don't know.

Mr. HORN. I think when the inspector general of HHS told me a few years ago that she had collected \$6 billion through her process, I think that is a pretty good measure, don't you?

Mr. LIGHT. It's a good measure of what we have been able to uncover. It's not necessarily a measure of what we have been able to prevent. This is a long-standing issue about how we measure IG effectiveness. By putting the focus on the measurable fraud, waste, and abuse, we tend to incent the IG's to look for the ways after the fact. We need to figure out a way, and I think HHS has done so, of building in effort to accept the possibility that next year we might produce lower statistical accomplishment.

Would Congress and the media and OMB accept that as a reasonable indicator of an IG success? What if June Gibbs Brown were to come before you and say that this year we have produced less fraud, waste, and abuse recoveries and we opened fewer cases because there is less fraud, waste, and abuse in this Department, because we are preventing it at the source, we are talking to Congress in advance of legislative activity, we have got the rulemaking process and we are going to be going down toward a theoretical zero. Human behavior being as it is, we are never going to get to that zero because there is always going to be fraud, waste, and abuse. However, what is the measure we use to look at reduction at this point? Do you feel that Government is less vulnerable today than it was 5 years ago? I would say in some cases, yes. I think in HHS, yes. I think it varies agency to agency as to whether we all feel more comfortable that we are preventing.

Mr. HORN. I would think that would be part of each agency's strategic plan, don't you, as to how the office is managed and what are the goals and have we got some significant payoffs where there is less fraud and abuse.

Mr. LIGHT. I think that if the strategic plan were to include, along with the targeting activities, a statement of where the IG is going to work to prevent and what are the significant programs that need to change at the source, I think that would be useful for everybody involved.

Mr. HORN. Mr. Harper.

Mr. HARPER. Mr. Chairman, I think you raise a fascinating question and one that should not be allowed to go off the radar screen, but I don't think it is one that's easily answered.

Part of the problem is we are dealing with a situation that is not static. I recall in corporate life, in a corporation, 1 year it seemed like we had a wave of frauds against the company. We had auditors and investigators out and we cracked several significant cases. Then we went for about 2 years with no significant fraud, at least that we knew of. Then in the third year the bad guys were always out there. They can be relatively intelligent beings oftentimes and they are always figuring out how to defeat the systems you have just put in place to make your system invulnerable, so it doesn't stand still. It may be we just measure what we can and keep strug-

gling to find a better way to decrease the vulnerability of the system.

Mr. HORN. You were probably in the room when I mentioned to Senator Collins Lee Hamilton's thoughts on the need for due process with various witnesses in terms of inspector general queries of these witnesses. Do you have any feelings on the degree to which that is absent or which that should be legislated or put together by the IG's through their various counsels and sent to us to reassure us that there are some fundamental rights in this operation? Does anybody have a comment on that or given any thought to it? No thought, huh? OK.

Mr. HARPER. The only thought about it, and this obviously goes back a long time since I have been involved, the active involvement of the Justice Department in their prosecutorial efforts through the FBI and others were often brought in very quickly where there was evidence of criminal wrongdoing, so that they could help guide and make sure that we were working within the standards that had been established to protect individual's rights as we were vigorously going after the investigation and prosecutions.

Mr. LIGHT. I would say that the most significant change in my examination of the IG's over the last 5 years is the weakening of the IG community itself as a source of pressure, peer pressure on IG's to honor the highest standards of conduct. I think that reflects a weakening generally in the concept of any sort of central management control in Government. It's out of fashion to argue that OMB should be a strong presence in the agencies. It's really a one-size-fits-no-one kind of era.

I think one of the things that I added in my statement was Benjamin Franklin's famous phrase that we either hang separately or hang together. The IG's, for whatever reason, it could be the significant number of vacancies or the turmoil surrounding a couple of high visibility cases, they are not hanging held together right now. The PCIE is active but my sense of it is that it's not a presence and that within the community which relies on self-policing to a very high degree. There has been a weakening of the collective judgment and the collective commitment. If you have seen one IG-ship, you have seen one IG-ship. This sort of notion that there is no binder I think originates in the Office of Management and Budget. This isn't the hearing to talk about the office of Federal management, but it is a good point to argue that there is no real commitment at the highest levels of the center of Government to coherence across agencies right now. That is clearly out of fashion. It will come back. But right now it is out of fashion.

Mr. HORN. Dr. Light, according to GAO estimates, inspectors general's staff generally are half auditors, quarter investigators, remaining quarter administrative staff. Is that the appropriate allocation of inspector general personnel or should it be skewed another way?

Mr. LIGHT. I have been asked by the Honorable Dave Williams who's the editor of a wonderful journal that is a cohering binder, the Journal of Public Integrity, to write an article on how I would distribute 300 FTE. I have titled the article "If I Were King of the Forest," which is about as close as I will ever get to making that tough decision. I would distribute 100 to investigations, 100 to

audit, this is professional staff, not administrative, I would put 50 in inspections and evaluations and I would set up a separate management analysis unit. I don't think there is much management analysis going on in agencies right now. I get a lot of grief on this issue from evaluators who are non-IG's and management analysts at the National Academy of Public Administration. This is heresy of a sort. I think the inspector general concept, the OIG's are the last safe harbor in Government for independent analysis and judgment. I think you use that carefully. They have the quasi-independence and it is a precious resource. To the extent that they could provide the cover for evaluation and management analysis that is not under way right now, I think that's to the good. But whether they have the staff capabilities and the training to do so is a question that I would urge the General Accounting Office to ask and the IG's to ask themselves.

Mr. HORN. Another thing you have noted is adding an assistant inspector general for inspection to each Office of Inspector General. Could you elaborate a little on that? And what is the benefit of that officer to the agency of which they are a part?

Mr. LIGHT. If I am designing a strategic plan that focuses on reduction or vulnerability, I need to have an evaluation capacity that's not the long-term capacity that you find in the Assistant Secretary for Planning and Evaluation at HHS, for example, but an evaluative capacity that can produce analysis of vulnerabilities on a faster turnaround. The IG's have struggled with the inspection function over the years. It is probably due to the fact that in my book, I argue that we should have more inspections, that we have gotten less inspections. In the last 5 years, we have actually reduced the inspection activity in most departments and agencies, in part because the IG's felt that they didn't have the staff to do the job that they already were tasked with, audit and investigation, and in part because they didn't feel that inspections were yielding the kind of quick hitting results that they feel obliged to deliver, rightly so. So we have seen a folding down of the inspections function in several departments.

Mr. HORN. When you say inspections, give me an example of what you think inspections should be and in what areas.

Mr. LIGHT. For example, in the HHS OIG, the inspections function could involve everything from doing a study of children's access to cigarette vending machines at the Secretary's request, a quick hitting, very useful analysis but neither audit nor investigation, to surveys of customer satisfaction with Social Security and Medicare. Again, useful information, independent, of value to the Secretary, quick hitting, not a long evaluation but certainly not an audit and investigation.

This capacity to provide quick, detailed analysis that is not available anywhere else in Government right now I think is essential. It has increased, I believe, the HHS OIG's relationship with the Secretary to be able to do a quick turnaround study, inspection, evaluation, whatever you want to call it, that the Secretary can then use to develop policy on a problem that she or he deems important.

Mr. HORN. One of the things we have been obviously thinking of as we reviewed strategic plans are the performance indicators that

go with that. I would think on the points you have just made that the IG is absolutely essential to the Department in being part of that performance indicator development group. Do you agree with that?

Mr. LIGHT. I absolutely agree with that. I think that this is a signal issue for the IG's, that they have historically, not all of them, but historically argued that participation in such an activity is a violation of their yellow book independence. I disagree strongly. I think the authors of the IG Act wanted the IG's to be aggressive about being upstream, as we would say, in the development or the prevention of fraud, waste, and abuse. I think the IG's should be involved at a minimum in vetting and examining the performance indicators picked by agency programs as part of their strategic plans. I think the IG's at a maximum should be involved in the conversations about what a valid indicator might be to measure the success of a given program in a given department. They should be members of that conversation in validating the choice of measures used.

Mr. HORN. Mr. Harper, you had a comment, I noted.

Mr. HARPER. If I may lay a question on the table? Rather than adding numbers of staff, one question I might have is whether or not we have too many inspectors general. I have been a strong supporter and advocate of the program from the beginning. But I wonder if some of the small agencies' inspectors general programs are really equivalent to those at HHS, Defense, or any of the other major departments, and if we might not get more leverage perhaps by an IG in one of the larger departments providing that function to some of the smaller agencies and activities of government.

In part I say that because as I reflect back on the early days of the PCIE, I think one of the things that made it very effective was the excitement, the high visibility of it, and the interaction. Right now you would have to have a room approximately this size to get all of the IG's together, whereas when the PCIE started we could meet in a relatively small conference room in the new Executive Office Building and still have room for the Director of the FBI, the Comptroller General, the Assistant Director of the FBI for Investigations, all to meet with us. There was real substantive exchange of views amongst the inspectors general about how to make their programs more effective. Now it almost seems like now if you have a meeting, you are having a convention rather than a real exchange of ideas among active professionals providing leadership to a very important function of Government.

Mr. HORN. It is a plebiscite more than a committee.

Mr. HARPER. Right.

Mr. HORN. You were Deputy Director of the Budget under President Reagan.

Mr. HARPER. Yes, sir.

Mr. HORN. And you were very active with the IG's.

Mr. HARPER. Right.

Mr. HORN. Have you watched what has happened by other Deputy Directors and could you give this committee a feel for either the participation of the Director, the Deputy Director, or the Deputy Director for Management in working with IG's? What is your impression of what has happened over the years?

Mr. HARPER. My impression is that it is something that requires constant attention and maintenance. Because frankly my observation is some of the Deputy Directors of OMB have taken less interest in it than I did. Others have taken as much interest as I think in this a critically important function. It is one naturally allied with the responsibilities of the Office of Management and Budget and deserves the attention of the Deputy Director or the Director. When I was there, basically I was given the management portfolio of government and therefore this was one of my most important priorities. President Reagan was vitally interested in the inspectors general program. It never hurts to have the President of the United States interested in your program.

Mr. HORN. On the issue of bonuses, should IG personnel be rewarded for extraordinary effort with bonuses? I think Dr. Light has commented on this.

Mr. LIGHT. It depends on who's giving the bonus, doesn't it? And when the bonus is being proffered. I thought the IG's were out of the business of accepting rank awards. I thought that that had been disposed of. I made a comment at an IG retreat a few months ago, and one of the IG's came to me afterward and said I think you should audit that statement. I am told now that IG's, some IG's do participate. It is a tough situation because the deputy IG's and everybody else in the OIG shops are eligible for bonuses and pay increases. You end up in a situation where many IG's are making less than their deputies because the ones with good judgment are voluntarily exempting themselves from eligibility for awards and then they see their deputies rightly getting those awards. It has become a situation where we have some very talented deputy IG's across the Federal Government who are loath to consider taking an IG-ship for fear of the pay cut.

Now, that is just an untenable situation. I think it is created by the way the current bonus system works and we ought to legislate on it or begin a conversation with OMB to change the way the system works. You could easily make the IG's eligible for bonuses through a review process that would originate at OMB rather than with the departments. It is a tough issue. But whether a bonus is appropriate is very dependent on who's giving it and when it is being given. Unfortunately, the appearance issues are rife here, I think.

Mr. HORN. Well, that is one, I think, the committee wants to review. We would appreciate any comments any of you have to give us. Does anybody else want to comment now on that?

Mr. Harper, getting again to your days as Deputy Director of OMB when you had that huge office and that fireplace that I visited, remember? When I came back from China, I said, "The best investment this Government has is the United States Information Agency. Don't mess around with it." Thank you. The President's Council on Integrity and Efficiency, when you were Deputy Director, was that council effective in dealing with allegations of wrongdoing by inspectors general and their staffs?

Mr. HARPER. I believe it was. We did have one or two occasions where it became necessary to investigate the activities of one of the IG's because of allegations that were made and we essentially established a committee of other inspectors general and their staffs

to launch an independent investigation of those allegations. I think that system worked quite well in our circumstance.

Mr. HORN. Are there any comments you would like to make on Senator Collins' testimony? She laid out some specific recommendations somewhat along your line, Mr. Harper, on consolidating smaller IG operations, such as the National Endowment for the Arts and the National Endowment for the Humanities, where there are two separate IG's. If you do, this is the chance to voice it, because that was the last question.

Mr. HARPER. I think a rule of common sense should apply. In the private sector, if you have a small subsidiary, you don't create a full-fledged internal audit and investigations staff to service a small subsidiary. Instead the parent company supplies the auditors or you hire the auditors from an outside public accounting firm. There are many things to which common sense applies. I realize in Government somehow it is easy to divorce common sense from practice. Any way that we can possibly nurture those resources which the taxpayers do give Government and which I think the IG program has done over the years is marvelous. The role the IG's have played in protecting those resources as a part of the management team of the executive branch is vitally important. I just urge people think about common sense in terms of putting together this program as well.

Mr. HORN. I thank you. On that optimistic note, we will substitute panel 2 with panel 3, the inspectors general. Thank you very much. Would you stand and raise your right hands.

[Witnesses sworn.]

Mr. HORN. The clerk will note that all five witnesses have affirmed. We will begin with the Honorable Sherman M. Funk, the former inspector general of both the Department of State and the Department of Commerce. Thank you for coming.

STATEMENTS OF SHERMAN M. FUNK, FORMER INSPECTOR GENERAL, DEPARTMENT OF STATE AND DEPARTMENT OF COMMERCE; JOHN C. LAYTON, FORMER INSPECTOR GENERAL, DEPARTMENT OF ENERGY; ELEANOR HILL, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, AND VICE CHAIRMAN, THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY; JUNE GIBBS BROWN, INSPECTOR GENERAL, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND SUSAN M. GAFFNEY, INSPECTOR GENERAL, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. FUNK. Mr. Chairman, I have already given my statement for the record. I would like now to discuss a few of the items that have come up this morning, some of which I have already covered in my formal statement so I won't go into them in detail here. I was bemused by many of the comments, because they seemed to be replaying roles that go back a long way. Mr. Harper did a fantastic job when he had the deputy job at OMB. You asked the question how effective PCIE was. It was very effective then, sir, extremely effective.

I must say that there are a few things that have to be addressed. Some that can be left as is, but there also are some which must be addressed. One of them is the role of the small IG's vis-a-vis the

large IG's. One year after I was appointed at State, not quite a year, the Congress in its wisdom created an inspector general for the Arms Control and Disarmament Agency. They laid that job on the IG of State with no additional money. It would simply be a cross-servicing arrangement with State. I worked it out with ACDA and it worked out extremely well. I had a number of my auditors and a number of my investigators and inspectors who became very proficient in the arms control area. So I had people—expertise. It didn't cost the taxpayers an additional penny because the budget of ACDA was simply subordinated to State for that purpose.

I recommended in my statement that a similar procedure be adopted across the board. It is really quite absurd to expect an office of 10 or 15 or even 20 people, and many of the smaller IG's don't have anywhere near that number, to carry on all the functions in the Inspector General Act. It is simply not possible. Something has to give. So I really urge the committee to go forward with recommendations and then legislation toward that end.

There are many ways of hacking it. My own personal preference would be to do what we did at ACDA that worked so well. Now, we can simply assign one of the smaller IG's to a larger IG. The smaller OIG is simply absorbed in this case by the larger one, and there would be no—there is no OIG infrastructure required at the agency, the smaller agency, there is no expense required other than the reimbursement. It will be an enormous saving across the board.

The second point I would like to discuss is the term limits area. It seems to me for a long time, in fact I was sitting in this very room in this very chair many, many years ago when the chairman, whose picture is above you to the right, asked me what I thought about term limits. I said, "I think it's a damn good idea, Mr. Chairman." The IG sitting next to me kicked me under the chair.

Mr. LAYTON. As I would.

Mr. FUNK. But I did think then, I think now, it is something that is largely overdue. The reason basically is this: if you spend too long in one agency, inevitably you become very close to the senior career staff and to the political people. This raises a very severe question in terms of how independent you can really be if you become that friendly with people over a period of years. It is very, very difficult to maintain an independence.

There is another aspect of it, which is ancillary. My wife is sitting back there. She recalls the time, I am sure, when I invited four Assistant Secretaries to my house for dinner one night and their spouses. During the course of the next 6 months I had to investigate all four of them. This is a very difficult thing, as all my colleagues here know. All the more reason why term limits I think are something which should be seriously considered.

I personally prefer 7 years because it gives a long enough time to get the feel of an agency and of course there should be an option if the inspector general is doing a good job to be posted to another agency.

Let me kick around the office of counsel, which is something I did not put in my remarks and I meant to. There is no mention of an office of counsel in the Inspector General Act, although all the IG's to some extent have their own counsel, either totally under their control or posted from the Office of General Counsel in the

department, in which case they come, theoretically at least, under total control of the IG. But there has been some backing and filling, there have been a number of very ferocious arguments from various departments.

I myself when I went into Commerce in 1981, I had a monumental battle with the general counsel, also named Sherman. He said that it is my job not to embarrass the Secretary. I said, "With all due respect to the Secretary, it's not my job. My job is to do what is said in the law. And your job is to protect the Secretary, I understand that, but that should not be my job, that's yours."

Not having your own counsel puts you at risk. It doesn't mean that your counsel, your attorneys will be experts in all the law of that department that pertain to that department. Of course not. But your attorneys should be fully conversant with the powers of the IG Act and the difficulties that stem from that and the friction that may arise. So I think that I would strongly opt for an office of counsel in the act.

The second thing, which has already been mentioned by two people, I would strongly endorse an assistant IG for inspections, also in section 3 of the act. You asked what an inspection means. When I was at Commerce, Mr. Chairman, my first week there I was told by my audit staff that we had a 36-year audit cycle. I said, "What the heck does that mean?" They said because we have so many auditable entities in this big Department of Commerce all around the world, it would take 36 years to audit all of them. I said, "That's ridiculous. We can't live like that." So having spent 12 years in Defense, working very closely with the military IG's, the military IG of the Air Force in particular, I developed a concept of inspection program at Commerce which was a kind of a bastardized mixture of civil and military arrangements, but it worked quite well. We would perform unannounced inspections on field offices, regional offices, laboratories, ships, the hurricane aircraft squadron in Miami, weather stations, and so forth. There was never any advance warning. A team would materialize outside that facility at 9 o'clock on a Monday morning and stay there until Friday evening, 1 week onsite, 2 weeks of preparation, 1 week onsite, and then come back and within 2 or 3 weeks they would have a draft report out. It became so popular, all my auditors wanted to join that because auditors don't normally see reports so fast. They hunger to see a written word in quick order and they were able to do that here.

Then I moved to State. I found out to my great delight that Teddy Roosevelt back in 1906 had written a kind of scathing letter to Hay, the then Secretary of State, and he said, "Why don't you get some people out around the world inspecting our consuls so we can find out if they are doing a good job," which they did. They set up an office of inspection back in 1906. It was a very good thing for the inspectors, because at that time our consuls were paid \$1 for every visa they granted. So if they granted a lot of visas, they got quite a few dollars, which in those days was substantial. The inspectors went out and if they found something wrong there, they were given the power to immediately dismiss the consular officers, up to the consul general. So we had inspectors from the Department of State who would go out, find wrongdoing, immediately re-

place the man and start making a killing themselves. It was an interesting arrangement. But the inspection became an important part of the Department of State. I inherited that. It is an invaluable function. There it is not quite as loose as it was in Commerce.

You asked how you define it. In my paper I say, and I will repeat it here, sir, to me an inspection is a review which is a mile wide and an inch deep. An audit, on the other hand, is a review which is an inch wide and a mile deep. There is a totally different concept and they have two totally different payoffs, but they are both very valuable. Nothing can replace the quality of a good audit, but nor can anything replace the speed, efficiency, and the general jack-up qualities that permeates to the people who are inspected. I urge that this be recognized in the IG Act, not as a requirement sir, but there may be an assistant inspector general for inspections.

A word about the GPRA and financial statements. I was very much alarmed when the CFO Act was passed. Although I was strongly in favor of it, I knew what was going to happen inevitably. Because the IG's have so much talent in the auditing area, they pretty much have a lock on the accountants in the department. I was very much afraid that the IG would be sidetracked by having to perform a lot of financial statement audits. These themselves are enormously valuable. But when you have a limited number of people and you have a limited budget, limited resources, and you are given an infinite amount of work to do, some decisions have to be made about what to do.

I was afraid when the Roth bill came downstream that there would be a requirement ginned up to audit the legitimacy of the goals that were being established as very important to the success of that bill. I saw myself in a position where we were doing all kinds of planning work for others and not have enough resources to do our own work. That frankly worried me. It hasn't materialized as badly as I had feared, but there has been, to my knowledge, I have been told by many of the IG's, there have been times when they have put so many resources on the auditing of financial statements, they haven't been able to do all they wanted to themselves.

On strategic planning, you can't knock strategic planning, Mr. Chairman. It is almost un-American to do that. But I must say whenever I hear that term, I am reminded of a procurement officer, a very senior procurement officer I met at a party once. I asked him how he was doing. He said, "Mr. Funk, I must tell you something. I am doing so much procurement planning and my shop is doing so much procurement planning, we ain't got time to read any contracts." That's a fear that I have about an excess of planning, and I will not go beyond that.

Finally, let me just say that Mr. Hamilton's letter to the IG of State, this of course was not my personal involvement, and I don't want to get into any details on the thing, but Mr. Hamilton proposed one element in his letter and also subsequently that I think will be pernicious if carried out. He says that the State Department should have a separate rule, a separate regulation for its investigations, distinct from the investigations of all other agencies. I think that's simply not going to wash. Investigators have a different mind-set. Thank God they have a different mind-set. Otherwise, they would not be doing their job right. But sometimes in the ful-

fillment of their job, they get carried away. When they do, they should be severely disciplined.

We have always told our investigators that they have a big stick. The IG Act is a very big and powerful stick. There is no need to be arrogant; there is no need to be vicious; and there is certainly no need to violate any regulation in order to get information, unnecessary. You have the power to compel testimony from anybody in the department. We don't have the power of testimonial subpoenas but we require cooperation from the employees of the government, we can require anything. If we had investigators who abrogated that, they were disciplined. That's the way I think it should be. But to establish some kind of exterior discipline coming from outside the IG, I think that would be in the long run ill-advised. It would create enormous morale problems among an office which is a very tough office to begin with, dealing, at least in my department, around the world in some hell holes that required some very dicey situations. Also, to be placed in a situation which is different from everybody else I think is wrong.

That is all I have to say now. I will be happy to answer questions later, sir.

[The prepared statement of Mr. Funk follows:]

Testimony of
Sherman M. Funk

before the

Subcommittee on Government, Management, and Technology
Committee on Government Reform and Oversight

April 21, 1998

Thank you, Mr. Chairman, and members of this Subcommittee for the opportunity to testify today.

I shall focus my comments on the Inspector General Act of 1978. Given 20 years of experience with the Act, the Congress now is in a good position to take a hard look at the Act, determine what parts of it work well, what parts work poorly or not at all, what parts need changing, and what these changes should be. I shall address each of these points.

My comments reflect not only my 14 years as an inspector general, half of them in the Department of Commerce and half in the State Department, but also my other 25 years of government service in several agencies, including Defense, Commerce and Energy. And finally, my comments also reflect my experience since 1994 as a private citizen, working with a number of foreign governments in their fight against corruption and ineffective or wasteful programs.

Twenty years ago, a whole generation ago, the Inspector General Act passed the House with only six opposing votes. It passed the Senate unanimously. Very few bills of any consequence have been treated so kindly on the Hill. This was despite the arguments from virtually every agency which testified during its run-up that the concept of a civilian inspector general who reported directly to an agency head but was barred from taking orders from that agency head was simply too impractical. The bureaucracy, it was claimed, could not work that way, especially inasmuch as the inspector general also reported to the Congress. Further, nobody in the Executive branch -- not the agency head, not OMB, not even the White House -- could change a word in these reports to the Hill.

But of course, these 20 years have shown that the inspector general concept can work and, indeed, has done so remarkably well over the years. Yes, there have been problems, some of them severe. But I can think of no other government program, even the least controversial, which has been free of problems. The genius of the (then-called) Government Operations Committee in the House, which drafted the Act, was in putting together a number of critical elements, some of them quite new, in a single, sweeping piece of legislation.

These elements, acting in concert, are the reason why the IG Act has become such a force in government:

- (1) **Multiple disciplines**, together with generally adequate resources, reporting to and under the supervision of the inspector general exist in each OIG. At a minimum, these include auditors and investigators. Increasingly, a third discipline has been added: inspectors. Together, these enable the IGs to bring to bear a balanced arsenal of weapons to identify waste, mismanagement, fraud, and abuse, and to find methods of dealing with each. Before 1978, there was no such concerted, singly headed effort. As a result, little attention was directed at programs that didn't work and which often spent considerable sums on efforts that were fruitless. To be sure, such efforts still go on, but – thanks to the IGs and to the media who covers them – they no longer go unrecognized.
- (2) **Independence of the IGs**, more real than anyone had actually hoped or feared. This has been buttressed by the nonpartisan nature of IGs, making them difficult targets of partisan attacks.
- (3) **The demonstrated professionalism** required by the Act in the backgrounds of proposed IGs.
- (4) **Aggressive audit follow-up**. The GAO has issued many outstanding reports, often accurately depicting incompetence or worse in the management of government programs. Usually, however, these reports are issued as one-shot blasts. Although the agencies are asked to keep the GAO advised of corrective action, this more often than not is honored in the breach. Even if the agency fails to comment on or correct identified inadequacies, little is done by GAO later to flag these problems. In the case of the OIGs, however, there are auditors who deal on a continuing basis with the agencies they review and who never go away. If agency comments are absent or misleading, the auditors counter with follow-up audits – the results of which are reported semiannually to the Congress, with copies going to the Appropriations as well as the oversight committees.
- (5) **Relationship of the IG with the Hill**. This is a tricky matter, inasmuch as those on the Hill tend to regard IGs as patsies who sell out regularly to agency management, whereas agency managers tend to regard IGs as finks who leak to Congress on a daily basis. In 1992, I chaired the first inter-IG workshop, the subject of which was the IG's relations with the Congress. Seeking a "sexy" title, I called the workshop "Straddling the Barbed Wire Fence." The name stuck (no pun intended) because it was, and remains, such an apt picture of IG-congressional relations. By any name, this relationship is critical. Program managers in the agencies never know what IGs are telling the various subcommittees about their operations, and they always fear the worst. It remains a potent weapon. For some reason I have never understood, few IGs fully exploit it; most spend little time on the Hill and some are perfectly happy if they never testify except for appropriations. To be sure, it is not a pleasant situation when an assistant secretary at an oversight hearing describes his program as working wonderfully. Immediately after, the IG sitting alongside then demolishes it as a terrible mess, citing facts and figures. It is indeed a "barbed wire fence." Which is why, I guess, assistant secretaries and IGs are both paid at the Executive Level 4.

- (6) **The relationship between the IGs and the media** is important to the former and helpful to the latter. But it has been usually uneven and often frustrating. Uneven because IGs – oriented toward a complex world of accounting and law enforcement – are ill at ease dealing with people who, almost by necessity, must settle for 20 second sound bites or punchy, simplistic news stories. And frustrating because once a scandal erupts in an agency, more often than not, the resulting media account has the agency head, with overt grim resolution (and a covert sigh of relief), referring the matter to the agency IG for review. That, given the inordinate time required to complete the simplest audit or investigation, effectively buries the matter for a long, long time. Although OIGs are often accused of leaking, once a review is launched, very rarely is information obtained for public release from those conducting the review. In fact, leaks almost always arise from those being audited or inspected because they agree with the OIG's criticism and think that such leaks are the best way of getting this message out. Unfortunately, except in heavily classified areas, it is almost impossible to stem such leaks. In any case, aside from the frequent news stories about a potential scandal being referred to an IG, eventually that IG will issue a report on the matter, and that report will either be given to the public or leaked. Then the media makes up in grand style for the story being buried for so long in the bowels of an OIG.
- (7) We must not overlook **the quality of the people who comprise an OIG** -- the unsung lawyers, planners, and administrators, as well as auditors, inspectors, policy analysts and criminal investigators. Are they consistently outstanding? Of course not; any more than the people they review. But in my experience, they average out at a higher level of competence than is usual in government, and tend to be much more mission-directed. This reflects in part the fact that many OIG staffers must undergo a long and difficult training period. In larger part, it reflects an almost paramilitary environment, with the OIG circling its wagons in the face of what is too often a drumfire of criticism from their own agency. They are, after all, the Messengers, and we all know their fate.
- (8) And finally, the **dirty little secret of the IGs** -- the federal labor force, overwhelmingly, is honest. This is not the perception of the public, fed frequent and generally accurate media accounts of extravagantly wasteful programs and, less often, stories of public servants on the take. Tragically, there are such programs, far too many of them and the resulting waste of money is formidable. However, no federal program which wastes huge sums is led by the mid-level and low-level bureaucrats who make up the vast majority of public servants. The waste almost always is created by the legislation which authorizes and funds these programs and/or by the incompetence of the political or civil service senior managers who run them. The great majority of civil servants who are convicted of wrongdoing have stolen relatively small amounts. And probably the greatest number of, and most useful, tips which reach the IGs about waste or fraud come from government workers who are deeply angered by what they see, and urgently want the bad guys to be nailed. Certainly, the lack of large-scale fraud by government employees decreases the number of convictions obtained by OIGs. On the other hand, the smaller the pool, the more effectively the IGs can focus on those who really warrant the attention.

- (9) OMB and the OIGs have bandied about for years **data on dollars** actually saved, dollars reprogrammed to prevent wasteful expenditures, fines received by the federal government as a result of convictions, and persons sentenced to hard time as a result of OIG efforts. The mind reels from their number and amount. Except for a brief time in the 1980's, when it appeared that OMB was trying to use the big numbers in the annual report of the President's Council on Integrity and Efficiency (PCIE) for political purposes, the documented results of OIG work have never been exploited on a partisan basis. These numbers have indeed been significant. By themselves, they serve as a realistic mirror of OIG activity. Unfortunately, large numbers, however well documented, turn people off; the numbers seem inherently difficult to believe, and eyes glaze over when the numbers are reported. Nevertheless, they are a striking vindication of the work by Government Operations 20 years ago.

All of the above, it seems to me, mark the success of the IG Act and of the IGs who have functioned within its strictures.

But, as I noted at the outset, there are parts of the IG Act that work poorly, if at all. What about them? Should they be eliminated entirely from the Act? Should they be changed? If so, how?

I suggest that attention be focused on the following, in no special order of priority:

- a. **Inspections.** The inspection function should be added to Section 3 of the Act. Admittedly, most IGs have already incorporated an inspection program despite the absence of specific legislative sanction. Such explicit sanction is obviously not an absolute requirement. Nevertheless, inspections have been such an active and valuable part of OIG operations that they should be recognized in the enabling legislation.

I concede that I am biased. At Commerce, I inaugurated an inspection program frankly patterned after my observation of military IGs. Except overseas, our inspections in Commerce were always unannounced, which gave them an immediacy and intensity rare in government. They also were short and to the point – rarely lasting no more than one week on site. Shortly after the team returned and briefed me and my staff, they would brief the assistant secretary concerned – giving him or her fresh information on one of their important field components. Unlike audits in which the information may well be many months or a year old by the time it is finally given to the program manager concerned, inspection results are very recent and thus more timely and readily useful. The trade-off is in degree of depth. I flippantly (but, I think, not inaccurately) describe an inspection as an inch deep and a mile wide, compared to an audit, which is an inch wide and a mile deep. The freshness and utility of a well-run inspection, and the opportunity it gives an IG to cover more of his agency's activities with fewer people and less time, more than merits its inclusion in the OIG. Properly used, they are an immensely valuable component of an OIG, and should be recognized as such in the Act.

- b. **The "designated entities."** In an honest but misguided effort to make "one size fit all," OMB and the Congress chose, in the IG Act Amendments of 1988, to give more than 30 additional agencies their own IGs. Some of these so-called

designated entities now have OIGs with just a handful of people on staff. Nevertheless, the Amendments do not differentiate the “new” IGs in any substantive way from the “old” IGs, even though some of the former have less than 10 employees while some of the latter have more than 500. The result is that a number of tiny OIGs and many OIGs with less than 50 employees are required to equally and fully comply with the complex requirements of the IG Act, complete very detailed and comprehensive semiannual reports, analyses of proposed legislation, and perform a range of audit and investigative activity entirely beyond their de facto capabilities. The aim of the Amendments is noble, as are the operations and achievements of the designated entity OIGs, but the difficulties are unnecessary. It simply makes no sense to charge a small office with roles and responsibilities beyond its resources.

More important is that the independence of the IG which is central to the success of the concept is extremely difficult to maintain in a situation where the IG is appointed by the very official whose work the IG is to oversee. Often, the office of the agency head and that of the IG are very near each other, creating a physical proximity in which independence becomes difficult to sustain in daily practice. My admiration for these designated entity IGs is boundless; they are operating in an environment never envisioned by the drafters of the IG Act, displaying great courage and moral strength. But they face an impossible job.

I suggest that there be a flat division of the IGs between the 23 larger agencies (the “original” 21 plus SSA and USPS) and the 32 designated entities. The latter should be tasked to produce an annual report to the Congress rather than a semiannual report, and the contents of this report should be significantly simplified. In addition, other requirements of the IG Act can be simplified as well, such as legislative analyses. It also would be helpful if a committee from the PCIE, representing presidentially appointed IGs and non-IGs, together with representation from the designated entity IGs, were charged with reviewing candidates for IG slots among the designate entities. This committee’s conclusions and recommendations would not be binding upon the agency’s head choice of IGs, but they should be extremely helpful.

Finally, consideration should be given to assigning each designated entity IG to an appropriate presidentially appointed IG so that the former can draw on the latter for criminal investigations. This would close the most severe gap among designated entity IGs; to be feasible, it would require some annual cross funding. This seems to be a do-able procedure requiring little red tape.

- c. **“Gun and badge” authority for the IGs.** This is a hotly contested issue, with feelings running strong and deep on both sides. I concede my bias: repeatedly my agents encountered intense and dicey situations. Although fully armed themselves, they had to delay urgent action until help appeared in the form of agents from other agencies who possessed what my people lacked: authority to arrest on the spot. Often, deals went sour because the assisting agents arrived late or there were miscommunications among those involved. It was incredibly frustrating. Today, for some unfathomable reason, DOJ always seems reluctant to extend “gun and badge” authority to those IGs who do not yet have it, even though the number of officers US-wide with this authority is expanding exponentially. As with testimonial subpoenas, however, I would not want this

authority given across the board to all the designated entity IGs. Nor should it be forced on an OIG whose IG prefers not to have it.

- d. **Testimonial subpoenas.** OIGs can use these now only through a grand jury convened by an Assistant US Attorney, who is working a case with OIG special agents. Many IGs seek testimonial subpoenas as an immensely valuable additional tool of their own, like the documentary subpoena already authorized to the IGs by the Act. Unless the Act is modified as I suggest above, to distinguish between the authority and responsibilities of the presidentially appointed IGs from those of the agency head-appointed IGs, I strongly oppose inclusion of testimonial subpoenas in the Act. It is, to be sure, a convenient and highly desirable tool – but it is also a tool which can be badly abused. The smaller IGs simply do not have the resources to handle this function adequately. Thus, unless the two kinds of OIGs are given separate roles and responsibilities, the status quo regarding testimonial subpoenas should be continued.
- e. **The seven-day letters.** These are intended by the Act as a shot across the bow of agency heads when an IG encounters an egregious situation or, in the language of the Act, a “particularly serious or flagrant problem, abuse, or deficiency” in operations of an agency. The IG can send a special letter to the Congress flagging the matter and the agency head has only seven days to pass it on to Congress with or without comment. All credit to the drafters of the Act: this is a wonderful and seemingly critical tool of the IGs. It is designed to be used very rarely, but when it is, WATCH OUT! The anger of a stern Congress will be vented on the poor agency head or program manager responsible for triggering release of the seven-day letter. Unhappily, such reactions occur rarely, if at all. Far more common is the loud yawning silence on the Hill which greets the letter. The clever IG never lets on to anyone his or her real feeling about seven day letters, which is: “what if they gave a war and nobody came? What if I write a seven day letter and, after betting all my chips on someone from the Hill giving hell to the agency, nothing happens? What do I do then? Is it worth taking the chance?” If indeed the Congress is serious about supporting the IGs, this problem can be easily eliminated or minimized. For example, the seven-day letter can be addressed to the committee or subcommittee with oversight authority for the problem. Such actions cannot always be spelled out in law, but it certainly is feasible to amend the Act so that the recipient must acknowledge a seven-day letter within a week and identify a contact with whom OIG staff can meet to discuss the problem.
- f. **Semiannual reports.** Generally these are too long and unwieldy. Even a small OIG issues comprehensive reports, in an attempt to meet the many requirements spelled out in the Act. Some semiannuals describe every audit, inspection, and completed investigation conducted during the previous six months, regardless of their significance, impact, and degree of public interest. Inasmuch as there are more than 50 IGs and each submits a semiannual opus, it is obvious that the congressional staff, can absorb only a few in-depth. The result is extreme overload – overload on the recipients as well as those who prepare the reports.

Ironically, despite all the printed material (indeed, perhaps **because** of all the printed material), Congressional staff often feel that they still lack information about which problems the IGs think are most important, and which problems may warrant the

intercession of the chairman or other senior member. The greater the mass of paper, the more difficult it may be to isolate the **truly** important.

One suggestion: the PCIE IGs continue to submit semiannuals although their contents could probably be reduced in volume, with greater use of bullets and sidebars. The designated entity IGs, however, would convert from semiannual to annual reporting. An ancillary suggestion: each semiannual or annual report would contain a list up front of the most important or egregious problems in that agency, together with the IG's plan to address the problem. My recommendation is to limit the number of problems in this section as a way of forcing very restricted thinking about their selection. Another procedure might be to limit the entire list and discussion of serious problems to no more than one or two pages.

g. White House involvement with the IGs. It is apparent that White House interest in the IGs has declined precipitously since the early 1980's. President Reagan, whose initial campaign promised to bring on board a bunch of "mean junkyard dogs." He followed this with semiannual meetings with all of the IGs and occasional meetings with individual IGs on certain subjects. President Bush, in his very first week in office, met with all the IGs in a candid exchange of comments on the nature of IG activity. That was his first and last meeting with the IGs. President Clinton has never met with the IGs or, for that matter, publicly expressed any interest in or support of the IGs.

Inasmuch as agency heads and senior program managers take their lead from the White House, this decreasing level of White House attention to the IGs sends a clear signal to these agency officials. Clearly, this is an executive, not a congressional matter. Nevertheless, in view of the importance and usually unstated impact of this lack of attention, it warrants mention here.

I have experienced a combination of hope and frustration while working with foreign governments to help them combat corruption. They are also interested in identifying their national programs which do not work, or work badly and the reasons for this. However, they are quite candid in emphasizing that their primary goal is to diminish corruption. In all cases, they are fascinated by the IG concept and want to know how it works, how effective it is, and at what cost. I always emphasize that our IG system is not easily portable; it reflects American standards, hopes, and yes, the fiscal and human resources we have in such comparative abundance. But over drinks after the working sessions are concluded, the local attorneys, auditors, and investigators let their hair down. They dream of a time when they too can set up an institution which attacks, all at the same time, corruption, management incompetence, and bureaucratic sloth. Their envy of our situation, of our Offices of Inspector General, is palpable. Your predecessor committee, Government Operations, built better than it knew.

I would be pleased to answer any questions you may have. Thank you.

Mr. HORN. That was an immensely helpful statement in addition to your very well-organized and point-by-point statement, which we will get back to.

Mr. Layton. Mr. Layton is the former inspector general of the Department of Energy. We are glad to have you here.

Mr. LAYTON. Thank you, sir. I appreciate the opportunity to testify. I think I am about to prove the statement wrong that when you have seen one IG, you have seen all IG's. I respectfully disagree with many of Sherman Funk's points of view. The subject of term limitations is one that I vehemently object to, and I will give you my reasons here shortly.

I have selected some of the things that you suggested you might be interested in hearing about, and I would just like to briefly comment on a couple of those. The quality of IG candidates is one area that you have expressed interest in. I think that the current legislation provides for inspector general candidates with diverse backgrounds. The act does not ensure quality. The quality of inspectors general is directly related to the level of interest shown by those involved in the selection and approval process. The administration and the Congress must fully scrutinize inspector general candidates for their leadership abilities as well as their technical backgrounds. If little or no attention is paid in the selection process, marginal candidates may become inspectors general.

In the area of performance measures for inspectors general, inspectors general have remarkable statistical accomplishments if that is a measure of success. Thousands of convictions we heard about this morning, billions of dollars identified that could be put to better use or recovered, significant disciplinary actions are taken annually by the thousands. But the Congress has amended the act to specify many of these units of measures that are to be reported annually. If these statistics are to be used as performance measures, they are likely to focus efforts on repetitive functions rather than on systems improvements. I do not believe the focus on statistical accomplishments is wise.

The GPRA passage has further emphasized governmentwide collection of statistics. We collectively need to arrive at better measures of performance than currently exist. There are many IG's who are diligently reporting on the vulnerabilities facing their agencies and the accomplishments in those areas are not easily enumerated. It is difficult to measure positive change in a program or how the outcome is agreed upon and place credit where it may be due.

I think focusing on positive change in Government programs is the real agenda of inspectors general. But it is very difficult to measure accomplishments in that area.

Concerning accountability of IG's, IG's in my opinion are accountable to the President, the head of the agency, and the Congress. I don't believe there needs to be additional legislation in this area, but there does need to be greater attention from those to whom inspectors general are accountable. Congressional oversight committees have frequent hearings and almost daily contact with some IG's and their staffs. There are some committees who actually review inspector general work plans and their semiannual reports. Further, some committee staffs read audit reports and ask questions. But it is my impression that this is not the norm.

I also believe there is a need for greater attention paid to the high-risk areas. The question needs to be asked, why do these areas remain vulnerable to fraud, waste, and poor management? The root cause of programmatic deficiencies need to be identified and solutions, including legislation, need to be implemented. Without this kind of action, inspector general resources will continue to be invested in establishing program shortcomings without enhancing effective delivery of services.

The subject of term limits, I think that if you have term limits you create a lack of independence for an inspector general. Regardless of the length of time, at the end of that term, the IG will have a tendency to want to run for reappointment, go soft on the agency management. They need to make the administration happy, or otherwise they won't be reappointed. I think that is one downside. Another one, it creates lame ducks. Everybody knows when that term is up, and they can give up on that IG at any point prior to that departure. A long term would create a political position. This would be a nice job to give to somebody that needs a job. There is no expectation that they may be gone at any time.

Term limits has another negative effect. That is, why take action against a poor performing IG if you know that their term will be up in x number of years? Just wait them out. There is no liability. A poor performing IG doesn't really cause anybody very much grief except the people that work for them. So I think there are a lot of reasons why you don't want to have term limits. The President can remove an IG who is performing poorly at any time. They have to notify the Congress and give a reason.

In the area of performance measures, I mentioned those, but I think we need to spend more time with the Congress, with the agency administration, the agency heads, and the administration on what it is you want from inspectors general. If you don't tell inspectors general what the expectation is, it is very difficult, in my opinion, to criticize them for failure to meet your needs if you haven't conveyed them.

That concludes my prepared remarks.

[The prepared statement of Mr. Layton follows:]

Mr. Chairman and Members of the Subcommittee, I am here at your request to testify concerning the Inspector General Act of 1978, as amended. It is my understanding that the focus of the hearing is on the role of the Inspector General; current issues facing Inspectors General, and opportunities to strengthen the concept.

I retired as the Inspector General of the Department of Energy in January 1998. During my 29 year career in the Federal Government, I have also served as an Inspector General appointed by the head of a Department, a Deputy Inspector General, as well as an office Director and a Special Agent. Prior to being employed in the Inspector General community, I was a Special Agent with the Federal Bureau of Investigation. I also have a degree in accounting and performed a variety of audit functions before joining the Federal Service. With this background, I feel well qualified to express opinions on the nature of Inspector General work and the current status of IG Act implementation.

The position of Inspector General is intended to provide leadership in the area of efficient and effective operation of government programs. As with other leadership positions, vacancies are not in the best interest of the taxpayers. As of April 15, 1998, there were seven Inspector General vacancies in major departments and agencies. The use of acting Inspectors General for long periods of time is not in the best interest of the taxpayer, the Department, the Office of Inspector General nor the acting Inspector General. These offices need the presence of a full time Inspector General who has the support of the Congress, as well as the respect of management. Continued uncertainty of who will eventually lead an office does not promote the economic or efficient operation of an office.

In the area of performance measures for Offices of Inspector General, the last President's Council on Integrity and Efficiency annual report compiled results of individual Offices of Inspector General. This report contains numerous statistical accomplishments. However, I believe it is counterproductive to try to use these statistics for comparative purposes. If they are used as performance measures they are likely to focus efforts on repetitive functions, rather than on systems improvements. There are many OIG's reporting on the vulnerabilities facing their agencies for which accomplishments are difficult to enumerate.

You have asked me to share my thoughts on several issues, which follow:

1. What was the purpose behind the Inspector General Act?

I believe the intent of the Inspector General Act was to provide an independent view of the operations of government programs. The Inspectors General were to identify opportunities to improve the delivery of services to the taxpayer and identify those people within the system who do not behave in an ethical fashion or are diverting government funds to their own use.

The Inspector General Act specifically provides that Inspectors General are to conduct and supervise audits and investigations relating to programs and operations of their departments

and agencies. Further, they are to provide leadership and coordinate and recommend policies designed to promote economy, efficiency, and effectiveness in the operations of government departments and agencies; and to prevent and detect fraud and abuse. IGLs are also supposed to keep the head of the agency and the Congress fully and currently informed about problems and deficiencies in their agencies.

2. Has the role of the Inspector General changed over the last 20 years and how can the Inspectors General best serve their agencies, Congress and the public?

The Inspector General role has not changed. The law remains essentially the same. The problems remain the same. The environment in which Inspectors General work in has changed. Each agency is confronted with a variety of forces that affect the nature of Inspector General work and the success of the Inspector General. Those forces include the orientation of the agency management. Does management want to, and are they capable of, significantly improving the internal control structure of the agency? Does management take aggressive action consistently when aberrant behavior is brought to its attention? How do the Congressional committees and their staffs become involved with the Inspector General's products? Does the Inspector General have access to the leadership of the substantive Congressional committees? Is there an opportunity for the Inspector General to discuss his or her work plan with the members of Congress who represent the taxpayers? Can the internal control deficiencies in particular programs be improved or do political realities outweigh enhanced internal controls?

The manner in which Inspectors General can best serve is dependent on the vulnerabilities of the agency, the Inspector General's ability to influence agency management, and most importantly the interest shown by Congress. Without the interest of Congress, there is little dynamic tension in the system. Inspector General recommendations become interesting, but not imperative. Looking back at the history of crises in government programs since the formation of Inspectors General, you see that Inspectors General have issued reports, in many, if not all, the problem areas, but change did not occur. The missing piece is effective communication. In order to have communications, you need someone to listen.

3. What should the role and mission of the Inspector General be in today's government?

I believe the mission, as intended by Congress, has not changed. There needs to be significant improvement in individual Inspector General interaction with the Congress. The Inspector General annual work plans need to be reviewed by the substantive committee of jurisdiction. There needs to be discussions about the high risk issues and vulnerabilities of agencies. These discussions need to include identification of the internal control weaknesses that permit large scale fraud, waste and abuse. Without substantive change to many departments' control environments, statistical accomplishments will remain high, but the administration of the programs will not improve. Unless there are fundamental internal control improvements, arrest and conviction statistics, indicators of program vulnerabilities, will continue to grow.

4. Have the Inspectors General been effective and what is the measurement of Inspector General performance?

Inspectors General have remarkable statistical accomplishments if that is the measure of success. Thousands of criminal convictions annually, billions of dollars identified that could be put to better use and significant numbers of disciplinary actions are taken annually. The Congress has amended the Inspector General Act to specify the units of measure to be reported annually, for the most part. I do not believe the focus on statistical accomplishments is wise. With the passage of the Government Performance and Results Act, there is added emphasis governmentwide on the accumulation of statistics. We need to arrive at better measures than currently exist. The public consistently rails at the concept of law enforcement officers being evaluated on the basis of the number of traffic tickets issued. The public wants the number of accidents to be reduced. Measuring traffic tickets is a measure of process, not outcomes. Measuring a reduction in the number of traffic accidents is a measure of outcomes, but subject to interpretation as to how the number of accidents was reduced. The supervisors of the police officers can better manage their operation counting traffic tickets. The same is true of Inspectors General. We can count statistical accomplishments which could be used to evaluate performance. It is much more difficult to measure positive change in program management, or outcomes and agree on how and why positive change occurred. Focusing on positive change in programs would be a more effective measure of change, but difficult to quantify.

I believe there is an opportunity to improve the impact of Inspector General work, if the focus is taken off statistical accomplishments and put on improving the functions of government programs. The focus should be on causing positive change in government program administration.

5. Are the Inspectors General accountable and to whom? Do the Inspectors General need to be held more accountable?

Inspectors General are accountable to the President, the head of the agency and the Congress. I do not believe there is a need for additional legislation in this area. There is a need for greater attention from those to whom the Inspectors General are accountable. Some Congressional oversight committees have frequent hearings and almost daily contact with Inspectors General and their staffs. There are some Committees that actually review the Inspector General annual work plans and their semiannual reports. Further, some Committee staffs read audit reports and ask questions. It is my impression that this is not the norm. I also believe there needs to be greater attention paid to the high risk areas. The question needs to be asked why do these areas remain vulnerable to fraud, waste and poor management. The root causes of programmatic deficiencies need to be identified and solutions, including legislation, need to be implemented. Without such action, Inspector General resources will continue to be invested in establishing the program shortcomings without successfully enhancing effective

delivery of services.

With added emphasis on improved delivery of program services there will be an enhanced level of accountability.

6. How can the quality of Inspector General candidates be assured?

Current legislation provides for Inspector General candidates with diverse backgrounds. The Act does not ensure quality. The quality of Inspectors General is directly related to the level of interest shown by those involved in the selection and approval process. The Administration and the Congress must fully scrutinize Inspector General candidates for their leadership abilities, as well as technical background. If little or no attention is paid to the selection process, marginal candidates will become Inspectors General.

7. What are the major problems and issues facing the Inspectors General today and how can the Inspectors General effectiveness be strengthened for the future?

I believe the Congress needs to demonstrate greater interest in the Inspector General community. There are notable exceptions, but, in general, there is an absence of interest in the selection of Inspectors General, the operations of their offices, including the planning process, and the products issued. OIG semiannual reports appear to be mostly unread.

The discussion of Inspector General tools and staffing should be predicated on a thorough understanding of what is expected of each Inspector General. Further, discussion of tools without an understanding of how they will improve the administration of agency programs is counterproductive.

As I have said, the Inspectors General interaction with the Congress has to improve. It is a two-way street and the Congress needs to take a greater interest in the functions of Inspectors General. There needs to be an improved agreement on the focus of Inspector General offices. Are Inspectors General meeting the needs of their customers? If the customers are silent, it is difficult for Inspectors General to fulfill their needs.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared testimony. I will be happy to answer any questions you may have at this time.

Mr. HORN. That is a very interesting contrast. I am sure we are going to have an interesting dialog on this. We now move to seemingly a regular witness before this committee, the honorable Eleanor Hill, inspector general of Department of Defense and vice chairwoman of the President's Council on Integrity and Efficiency.

Ms. Hill.

Ms. HILL. Thank you, Mr. Chairman. I am pleased to be back here again after last week's appearance on another subject. I have a lengthy statement, and I just want to briefly mention a few things in the statement, really on three points.

The first is the issue of change. Paul Light, I think, said something to the effect that the IG's were stuck or that he was concerned they were stuck. I am not necessarily sure I would agree with that. What I would say is that certainly while our core statutory mission has not changed considerably in the last 20 years, it has not changed at all, the core mission, we are certainly, all IG's, operating in an environment, to say the least, which is rapidly changing and changing very dramatically, I should say. It would be very hard for us, I think for any of us, to be "stuck," given the types of changes that we have to confront every day and the refocusing we have to do and the adaptation we have to do. We are all facing significant new challenges in an era of shrinking Government.

As a result, there has been an intensified effort throughout Government to combat waste and to streamline and to reengineer processes. The inspector general community, certainly including my office and the offices of my colleagues, has in fact been an integral part of that process on numerous fronts.

At DOD, for instance, acquisition reform, financial management as we heard about last week, infrastructure reduction, and information technology have all had a major impact on the focus of inspector general audit and investigative efforts. As both the benefits and the challenges posed by the information technology revolution continue throughout Government, the inspector general community must and has expanded their focus and their capabilities accordingly. At DOD, we are attempting appropriate oversight of the many key and very difficult issues in this changing area. In some of these, this committee is very familiar, such as the year 2000 computer program, the computer security problems at the Department, decades of disjointed information systems management and the change from that to fully integrated systems.

I could go on and on about the very new and constantly changing challenges we face in information technology. That is an area where the departments, at least in my experience of Defense, turn more and more to the IG's. To address those new issues, but really necessarily to do so and to do so capably, we have to change our abilities and our focus. For instance, as the problem of computer intrusion grows, we have seen the emergence of cyber fraud which presents totally new and uncharted challenges for law enforcement, including the inspectors general. At DOD, DCIS, which is the criminal investigative arm of my office, is in fact in the midst of trying to answer those challenges at our agency. They are setting up a new computer intrusion team and a computer crimes investigations unit as well as maintaining close cooperation and coordi-

nation with the FBI and the new National Infrastructure Protection Center. I might add that the IG at NASA and many of the other IG's we work with are also experimenting with similar innovations in that area because it is a new area for us, a new challenge.

Finally, as part of the increased emphasis on a more effective, more efficient, and better managed Government, many inspectors general have in recent years moved to work more constructively with management while still maintaining their independence. Some of this gets into the area of prevention that Paul Light referred to and I think June Brown's statement refers to. Over the past 5 years, for example, at DOD our office has participated in over 100 management process action teams, integrated process teams, and working groups that have been the Department's principal means of generating new ideas for reform and for process improvement across the board of all DOD business activities. So what we are doing on those teams goes beyond simply coming in after the fact and enforcing compliance. We are working with the Department actively to try to generate new processes, put in place new reforms to, among other things, prevent the kind of vulnerabilities we have seen in the past. The growing level of IG participation on those teams illustrates, I believe, the general acceptance, at least in our Department, of the need for IG advice to be considered during the reengineering of processes and not just after new processes are already put into place.

I also want to say a few words about the PCIE. We have three former PCIE vice chairs at this table. June Brown served for 2 years, I believe, as PCIE vice chair, John Layton was my predecessor up until last December, and I took over the post in January.

Mr. FUNK. I had it for a year and a half.

Ms. HILL. I am sorry, Sherman. I wasn't aware of that. So you have an abundance of expertise on the subject at this table this morning.

As you know, Mr. Chairman, the President's Council on Integrity and Efficiency was created in 1981 by Executive order to coordinate and enhance Government efforts to promote integrity and efficiency in Federal programs. As you know, the inspector general community is a large and a very diverse one. While all the IG's who sit on the PCIE do share a common, broad mission, we have many, many differences, ranging from the size and makeup of our operations to the specific focus and mission of the department in which we operate.

The great strength of the PCIE has been as a forum to bring together the IG's, to establish agreement on issues of common concern, such as quality standards and training, and to encourage them to share and learn from an exchange of best practices and lessons learned. I do want to say that we believe that the PCIE has made positive contribution to the IG community, and in turn to the goal of good government.

I just want to point out several of the projects that have taken place in recent months which underscore the point that the council can in fact make progress in areas of common interest to the IG's. One, a report issued on the review of the next generation of card-based payment systems. This report was issued with the participa-

tion of the Chief Financial Officer's Council on issues and concerns that need to be addressed as the Government moves to the increased use of credit cards for travel, purchase, and fleet card services.

Quality standards for investigations. The PCIE has recently reviewed earlier investigative standards for the IG community and updated them to reflect, among other things, the increased use of technology in investigations.

The prescreening of Federal grants and loans by offices of IG's and their agencies and loan offices. This was another report in which the PCIE examined procedures used by the IG's and their agencies to review Federal assistance projects.

Working relationships of the IG inspection and evaluation units. This was a survey again done on the issue of inspections which you have heard a lot of talk about this morning. Also, and I know this is of interest to the chairman, you referenced it earlier, we have completed, you will be pleased to know, a generic pamphlet entitled the "IG Investigations and You," and I will submit a copy for the record.

Mr. HORN. Without objection, it will be included for the record at this point.

[The information referred to follows:]

OIG INVESTIGATIONS AND YOU

INTRODUCTION

This pamphlet outlines your legal rights and obligations as a Federal employee during an Office of Inspector General (OIG) investigation and explains the OIG's authority to conduct investigations. In the course of an investigation, many factors affect your rights and you are encouraged to ask questions at any time. The information presented here is merely advisory and does not create any rights, privileges or benefits, either substantive or procedural, enforceable in any administrative, civil or criminal matter; nor does it limit any rights, privileges, or benefits that the Federal government may assert in such matters.

Under the authority of the Inspector General Act of 1978 (IG Act), as amended, OIGs conduct audits and investigations related to agency programs and operations. A primary purpose of these activities is to detect and deter fraud, waste, abuse, or mismanagement in the government.

Investigations by the OIG may be conducted by special agents (investigators) who are duly authorized Federal law enforcement officers or by other administrative investigators who specialize in noncriminal matters. OIG investigators are authorized by the Act to have full access to any records, reports, or other materials necessary to investigate allegations of fraud or abuse concerning their respective agency's programs and operations. They also are authorized to take statements under oath.

What types of investigations does the OIG conduct?

Investigators conduct three types of OIG investigations: criminal, civil, and administrative. In many instances, an allegation may involve multiple types of investigations (i.e., criminal/civil or criminal/administrative). In such instances, the OIG may investigate such allegations separately or as part of one case.

What are OIG responsibilities to you as an employee?

In carrying out the OIG's investigative mission, our responsibility to you and to the agency is to conduct all investigations in a fair, thorough, and objective manner. With the authority to detect and investigate wrongdoing and to seek prosecution or administrative remedies, also comes the duty to respect the rights of those under investigation.

OIG investigators conduct interviews with subjects, witnesses, and complainants in criminal, civil, and administrative investigations. In performing these duties, OIG investigators may do any or all of the following: obtain statements under oath, gather evidence, serve subpoenas, review agency documents relevant to a matter under investigation, and, under special authorities, make arrests.

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They also routinely assist prosecutors in preparing criminal and civil cases. In addition, OIG investigators can appear as witnesses before grand juries, in trials, and in administrative proceedings. They may seek investigative assistance from other Federal, state, and local law enforcement agencies and conduct joint investigations.

Interviews will be conducted in a professional manner, with respect for your dignity, whether you are a subject, witness, or complainant.

If you are the subject of an OIG investigation, the investigator will inform you at the appropriate time of your rights under law and/or agency policy, as well as the meaning of waiving those rights. You are entitled to have a copy of any signed waiver of your rights and any written statement that you provide.

What are your responsibilities to report wrongdoing?

As a Federal employee, you hold a position of public trust. Therefore, you have an obligation not only to maintain your own personal integrity but also to ensure that the government is not being defrauded by individuals who violate rules or act in improper/illegal ways. Most Federal employees and program participants perform their duties with honesty and integrity.

Unfortunately, some do not. You are expected to report information that you believe indicates instances of fraud, waste, abuse, and/or corruption.

What type of cooperation do you provide?

Federal employees are required to cooperate in investigations, including those conducted by an OIG, or risk administrative sanction for failing to cooperate. This requirement is mandated by the regulations of many agencies and by case law, based on the recognition that your cooperation is essential to the success and fairness of internal agency investigations. Employees should respond to questions truthfully under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest. However, an employee is not required to respond to such official inquiries if answers or testimony could subject the employee to criminal prosecution. Other examples of cooperation include:

- o Promptly reporting information concerning possible violations of laws, regulations, or incidents of waste or mismanagement.
- o Providing complete, truthful, and accurate information to OIG investigators.
- o Timely supplying documents and materials within your control.
- o Furnishing signed statements under oath when requested, absent a lawfully invoked privilege, such as the privilege against self-incrimination.

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- o Not making false allegations.

Although not a statutory or regulatory requirement, you are encouraged not to discuss investigative information with others. In some circumstances, discussing information with others could compromise or hinder an investigation or, when coordinated with others, may constitute an obstruction of justice.

How do you report allegations of fraud, waste, abuse, mismanagement, and/or corruption to the OIG?

If you have information that you believe indicates instances of fraud, waste, abuse, mismanagement, and/or corruption, you may:

- o Call or write the OIG Hotline at _____. You are not required to identify yourself.
- o Report directly in person, call, write, or send an electronic mail message to the Assistant Inspector General for Investigations or any local OIG field office.

If you report wrongdoing, how is your identity protected?

As a Federal employee, you are entitled to confidentiality. If you bring complaints or information concerning violations of laws, rules, or regulations, confidentiality will be granted unless disclosure is unavoidable.

Do you have protection against retaliation resulting from your reporting of wrongdoing?

Federal law prohibits retaliation against you for providing information to the OIG. If you believe that you have experienced retaliation as a result of cooperating with an investigator, you should report your allegations to the OIG or to the Office of Special Counsel at (202) 653-7122.

What are your rights if interviewed during an investigation?

Consistent with Federal law and regulation, when interviewed you should be advised whether you are the subject of an investigation if it is known at the outset of the interview. In many cases, you will be interviewed simply as a witness based on your knowledge, expertise, or experience with a particular program or set of facts. If you are a manager of a program, you have a duty to provide information on that program and may be disciplined for not providing it. In other cases, your participation may be more discretionary, such as when the OIG is asking about a matter outside the scope of your job responsibilities. Even here, as a Federal employee, you have a duty to cooperate and assist in the investigation to the best of your ability. Your obligation to cooperate is superseded only by your rights under the Fifth Amendment of the U.S. Constitution that prohibits requiring a person to incriminate himself or herself.

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If you are interviewed as the subject of an investigation, the investigators have the duty to inform you of the nature of the inquiry being conducted. You should also be told, if known, whether the investigation could lead to criminal, civil, or administrative action. You should also be advised of applicable Federal constitutional or other rights. Federal case law requires that you be advised of your right to counsel when you have been arrested or involuntarily detained. In all circumstances, you have the right to furnish a voluntary statement free from any promises, threats, pressure, or coercion of any kind or, if you feel your statement would incriminate you, to make no statement at all. However, if the Justice Department has declined prosecution or you have been granted immunity from prosecution, thus removing the danger of self-incrimination, you may be subject to administrative action, including losing your job, if you refuse to cooperate.

What happens after an investigation is completed?

At the conclusion of an OIG investigation, an investigator may prepare a report which states the allegations and facts collected. Reports which pertain to criminal and civil allegations are often referred to Federal, state, and/or local prosecutors if supported by evidence. Reports which pertain to administrative matters may be referred to agency management.

Will your supervisor or other management be advised if you are the subject of an investigation?

In most cases, investigators are not obligated to notify management of an ongoing investigation. However, in some instances, they may advise supervisors or higher level managers of the general nature of the allegation and the name of the individual under review. This is especially true when the investigation may disrupt normal office operations or when a manager will be consulted as part of the investigation. In cases where management is contacted, once the investigation is completed, the OIG may, if appropriate, inform these officials of the results.

Ms. HILL. This pamphlet was prompted by our discussion at the subcommittee's earlier hearing on investigative practice. It really is a general informational pamphlet for the IG community which can be customized for each IG to distribute to the employees within their own department.

Investigative training. We think a great accomplishment of the PCIE has been its efforts to establish an IG investigative academy in Glynco, GA, in 1993 for IG's. Also the establishment of the IG Auditor Training Institute, which is the only organization whose purpose is to address the unique training needs of Federal auditors.

Finally, I do want to say that the PCIE does fully recognize the importance of maintaining the integrity of the office and has over the years attempted many times to address concerns about accountability of IG's. As such, the PCIE supported and was instrumental in the drafting of the recent Executive order which established in 1996 the PCIE Integrity Committee, chaired by the FBI, as a formal mechanism empowered to review and, if appropriate, investigate allegations against IG's and certain senior staff members. If the investigation by the committee justifies further action, the committee's report is forwarded to the chair of the PCIE, who in turn forwards it to the head of the agency involved for appropriate action.

Mr. Chairman, the PCIE fully understands that integrity is perhaps above all else key to the credibility of individual IG's as well as to the entire IG community. We intend to continually work with the Integrity Committee to help ensure professional and timely investigations in this most critical area.

Finally, in closing, I do want to just point out a few areas of growing concern that I believe exist for the IG community. One has to do with cyber fraud, which I mentioned earlier. The potential for criminal activity in the cyber environment continues to grow as Government agencies increase reliance on electronic commerce and processes. This creates not only a need for increased IG focus, but also for specialized skills training and expertise, throughout the IG community. This is a growing area of difficulties for IG's, not only in competitively attracting individuals with this very sought after expertise, but also in training and maintaining these skills in-house. It is very difficult to compete, particularly with the private sector, in this area.

Second, record retention and digital signatures. Again as Government moves to a paperless environment, there is a need to determine what records should be maintained in a nonelectronic format and to develop digital signatures that would authenticate original documents. Obviously these are areas of concern for prosecutorial and law enforcement agencies, including IG's, since they could substantially impact the Government's ability to obtain the proof required for criminal prosecutions.

Outsourcing. Increasingly agencies are being encouraged to outsource functions that have been traditionally performed in-house. As the IG's are increasingly relied upon to perform independent validation of outsourcing studies, as required by OMB's Circular A-76, this will create additional resource burdens for the community. Moreover, there are legitimate questions about the ex-

tent to which Government can maintain adequate oversight of the taxpayer dollars being directed to the private sector.

The False Claims Act. Members of industry had recently suggested changes to the False Claims Act. This act has been an invaluable tool to the IG's and others in efforts to combat fraud against the Government. Some recent proposals would limit the impact of the act by raising the required standard of proof and by decreasing the amount of applicable penalties. I would say that those provisions, at least in my view, are inconsistent with the clear language of the act. The suggestion that it has in the past——

Mr. HORN. On that point, do you know of any legislative challenges to that act right now?

Ms. HILL. Legislative bills?

Mr. HORN. Are there any bills that would like to weaken that?

Ms. HILL. I had heard, Mr. Chairman, that there was going to be a bill proposed in the House. But I can't honestly tell you if it actually has been introduced. I have seen in the defense industry and I also believe in the health care industry has been circulating proposals to change the False Claims Act being circulated among the departments. We have seen them in draft proposal form.

Mr. HORN. Please let us know when you see something hitting the ground. Sometimes we don't catch everything. If we can all focus on that. I need to be informed.

Ms. HILL. We will do that.

Mr. HORN. Thank you.

Ms. HILL. Finally, let me just say a few words about resources. Now may be the appropriate time to explore innovative ways to ensure needed resources for IG's, including such things as asset forfeiture, retention of a portion of recovered penalties, and variations on the concepts embodied in the Health, Fraud and Abuse Control Program created in the Health Care Insurance Accountability and Portability Act. To be frank, my biggest concern in the 3 years that I have been at Defense has not been with the current provisions of the IG Act, which in fact for the most part has served us well. Rather, the biggest problem for my organization has been the continuing difficulties we face in coping with program downsizing. Inadequate investment in a sound and effective inspector general effort compounds the problems and the risks already facing Government. There is no question that professionalism, independence, and accountability are essential to effectiveness in IG efforts but so too are adequate resources.

Mr. Chairman, thank you. I will be glad to answer any questions.
[The prepared statement of Ms. Hill follows:]

Mr. Chairman and Members of the Subcommittee:

As the Inspector General (IG) for the Department of Defense (DoD) and as the Vice Chairperson of the President's Council on Integrity and Efficiency (PCIE), I appreciate the opportunity to appear before you today to discuss the role of Inspectors General.

Ten years ago, one of my predecessors appeared before the Government Operations Committee, as this Committee was known then, and testified that the concept of the Inspector General was valid and had proven to be a success. During the last 10 years, the Federal Inspector General community has become firmly established as an integral and highly valued component of efforts to ensure effectiveness and efficiency throughout government. Some of the recent accomplishments of both the PCIE and the Executive Council on Integrity and Efficiency are contained in the joint publication titled A Progress Report to the President, Fiscal Year 1996. The numbers in that report are impressive. The PCIE, which consists of the statutory Presidentially appointed Inspectors General, reported over \$15 billion in funds put to better use as a result of IG recommendations. During that same year, IGs working

independently, or with other Federal and non-Federal investigative agencies, obtained 3,372 successful prosecutions of criminal activities. FY 1996 also witnessed a total of 4,609 debarments, exclusions, and suspensions imposed upon individuals and entities doing business with the Federal government as a result of IG investigations.

HISTORICAL PERSPECTIVE

While the American concept of the Inspector General goes back to the Continental Congress and the army of General George Washington, it was not until the late 1970s that the original concept was expanded to include a much broader mission and mandated in certain Federal civilian departments. The Congress created the first statutory Inspector General at the then Department of Health, Education, and Welfare (HEW) in 1976. The following year, an Office of Inspector General was included in the legislation that created the Department of Energy. In 1978, due in large part to the successes of the IG at HEW, the concept was expanded to 12 agencies when the Congress passed the Inspector General Act (P.L. 95-452). At the time, it was hailed by Congressman Lawrence Fountain as

"one of the most monumental pieces of legislation ... considered, because of the billions of dollars it may well save through increased economy and efficiency and a reduction in fraud and program abuse." Congressman Ben Gilman called it a "first step in the process of government accountability." Despite some initial opposition, the Congress and Administration crafted a compromise bill that passed with overwhelming bipartisan support.

In 1982, a provision in the National Defense Authorization for FY 1983 (P.L. 97-252), created an Office of Inspector General for the Department of Defense. There had been much resistance within the Department to the idea of a statutorily mandated Inspector General. The Congress answered some of the Department's concerns about national security by granting the Secretary special authority to prohibit IG audits, investigations or subpoenas where "necessary" to preserve national security interests. The fact that that authority has never to date been exercised underscores the fact that the IG concept has indeed worked well at DoD over the years.

Since 1978, with the exception of 1984, 1985, 1990, 1991, and 1992, a new Office of Inspector General has been

created every year and today there are 28 Presidentially appointed and Senate confirmed Inspectors General and 31 IGs appointed by the heads of designated Federal entities.

OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

I would like to take a few minutes to share with you some facts and comments relative to the Office of Inspector General, Department of Defense.

Combating fraud, waste and abuse in an entity as huge as the DoD is a substantial challenge: in Fiscal Year 1997, the DoD encompassed \$1 trillion in assets; 1.4 million active duty military forces; 1.4 million in the Ready and Standby Reserve; and about 800,000 civilian employees. The amount of taxpayer dollars at issue is just as huge: the Fiscal Year 1998 budget for the Department of Defense is \$250 billion.

In short, we in the IG's office have plenty to do. To accomplish our mission, we have today over 1,200 personnel, including auditors, criminal and administrative investigators, and program evaluators. I might add that there are many other investigators and auditors throughout

the Department to which, for lack of resources, we often delegate work, reserving the right to oversee what they do.

Our criminal investigators focus primarily on contract and procurement fraud, health care fraud, antitrust violations, bribery, corruption and large-scale thefts of government property while our auditors perform the primary internal audit function within the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Unified and Specified Commands and the Defense agencies. This work entails coverage of such areas as mismanagement, matters involving economy and efficiency in DoD operations, contracts and programs, and financial audits.

Recently, in response to concerns from the Congress regarding the need to improve oversight of the DoD intelligence community, we established a separate IG office of Intelligence Review. This office has functional oversight of the various Defense intelligence agencies, such as the National Security Agency, the Defense Intelligence Agency, and the National Reconnaissance Office.

Additionally, the IG is responsible for conducting administrative investigations of ethical violations and other misconduct by senior DoD military and civilian officials. We also conduct statutorily mandated whistleblower investigations and operate the DoD Hotline which last year received over 16,000 contacts.

While our work does include self-initiated risk assessments, a growing portion of it is prompted by DoD management requests and statutory mandates. In addition, we receive numerous requests from committees and individual Members of Congress to conduct audits and investigations. Last year, we received over 365 inquiries from Members, most on behalf of their constituents concerning personnel or contracting issues.

ACCOMPLISHMENTS

Looking back over the first 20 years since passage of the IG Act, there have been many significant accomplishments that attest to the wisdom and the value of this legislation. Monetary savings identified by audits and investigations alone are significant and have far outweighed the operational costs of conducting them. I

have already cited the most recent figures for savings produced by the PCIE Members of the Inspector General community. At the Department of Defense, since Fiscal Year 1989, IG audit reports have identified almost \$16 billion in agreed upon savings. During that same period, monetary recoveries through investigations by the Defense Criminal Investigative Service (DCIS), the criminal investigative arm of my office, have totaled over \$4.5 billion. Historically, our criminal investigators alone have returned at least \$15 in recoveries and fines for every dollar spent on their operations.

Perhaps a more important but less quantifiable indicator of accomplishment may be the degree to which the Inspectors General have been increasingly entrusted to bring needed independent and credible oversight to a wide variety of critical issues throughout government. To insure both professionalism and independence, Congress equipped the Inspector General Act with two rare, if not unique features. First, the Act required that IGs be appointed on the basis of integrity and demonstrated ability in at least one of certain designated fields of expertise. Secondly, the Act established a dual reporting requirement for IGs--both to the head of their respective

departments and to the Congress. The effectiveness of IGs is dependent on establishing a good working relationship with both. The dual reporting requirement in and of itself creates a clear incentive for objectivity, independence and professionalism in both audits and investigations.

Increasingly over the years, both the Congress and Executive Branch management have turned to the IGs for objective reviews of sensitive issues of all types. At Defense, we have been asked in the last few years to review such controversial and highly visible issues as costs and savings associated with the Base Realignment and Closure Commission; the adequacy of over 50 investigations involving deaths of service personnel; the assignment of military personnel to Congress; the disappearance of chemical logs created during the Gulf War; the shootdown of the Brothers to the Rescue plane by Cuban MiGs; training issues associated with the School of the Americas; and allegations involving the deaths of U.S. citizens in Guatemala. These reviews were done at the request of Congress or the Department, and in some cases both. This type of reliance on the IG is not unique to the Department of Defense. Just recently, the Commissioner of the Internal Revenue Service sought out assistance from the

PCIE in conducting a thorough and independent review of the IRS Inspection Service, a matter of some concern to the Congress. Several IGs have detailed a total of 10 people to work on this review, which is now ongoing. In short, while clearly the IGs are not perfect, our customers - principally the Congress and the Department in which we work - increasingly rely on us for objective and professional assessments of critically important issues.

CHANGES AFFECTING INSPECTORS GENERAL

In the 20 years since the passage of the IG Act, the core mission of the IGs, including the DoD IG, has not changed. As the Inspector General, my role is to use our resources to help the Department both identify its most critical problems and also find solutions to those problems. As stated in our strategic plan, the mission of the DoD IG, is:

"to promote national security and integrity and credibility in government by conducting objective and independent audits, investigations, and evaluations and other activities to prevent, detect and help correct problems in DoD programs and to identify

opportunities for improving efficiencies and effectiveness."

While our mission is basically the same, the environment in which we operate is changing dramatically. The Department of Defense, as the rest of the government, is undergoing immense change. We are all facing significant new challenges in an era of shrinking government. As the government downsizes, difficult, and often painful, decisions must be made on where losses will be taken and what core processes need to be preserved.

As a result, there has been an intensified effort to combat waste and to streamline and reengineer processes. The Inspector General community, including our office, has been an integral part of that process on numerous fronts.

At DoD, acquisition reform, financial management, infrastructure reduction, and information technology have all had a major impact on the focus of our audit and investigative efforts. We have worked hard for instance to promote acquisition reform while reporting deficiencies in weapons systems planning and supporting efforts to insert new lower cost and commercial dual use technologies into

existing weapons systems. We have recommended the consolidation, automation, and integration of the Department's many, many financial and accounting systems, hoping to vastly improve the accuracy and reliability of the financial data in those systems.

On another front, while advances in information technology promise improved access to information, it also presents new and substantial additional challenges for government and for the Inspectors General. At Defense, there is a huge potential for abuse in its vast information infrastructure--that infrastructure now spans over 2 million computers, 10,000 local networks, and 100 long-distance networks. The Department spends more than \$10 billion a year on information technology. Nevertheless, it's been reported that as many as 250,000 attacks were carried out against Defense Department systems in 1995 and I am told that number has continued to grow in the last two years. This is accomplished using tools and techniques now available to millions of computer users. While it is estimated that at least 65 percent of those attacks are successful, only one percent are actually detected and reported.

As both the benefits and the challenges posed by the information technology revolution continue, the Inspectors General must expand their focus and their capabilities accordingly. At DoD, we are attempting appropriate oversight of the many key issues in this very complex and changing area. Those include addressing the serious challenges posed by the Year 2000 conversion program; improving the Department's perilous computer security posture; moving away from decades of disjointed information systems management to fully integrated systems; and effectively implementing the disciplined investment decision making process mandated by the Clinger/Cohen Act.

As the problem of computer intrusion grows, we have seen the emergence of "cyber fraud" which presents totally new and uncharted challenges for law enforcement, including the Inspectors General. At DoD, the DCIS is attempting to answer these challenges through a new computer intrusion and computer crimes investigations unit as well as close coordination with the FBI and the recently created National Infrastructure Protection Center.

Finally, as part of the increased emphasis on a more effective, more efficient, and better managed government,

many Inspectors General have in recent years moved to work more constructively with management, while still maintaining their independence. Our goal should be to become part of the solution process, rather than simply identifying the problems. Over the past 5 years, the DoD IG, has participated in over 100 management process action teams, integrated process teams and working groups that have been the Department's principal means of generating new ideas for reforms and process improvement across the spectrum of DoD business activities. At present we are involved in 57 such groups. The growing level of IG participation on those teams illustrates the good professional working relationships between the IG and the rest of the Department, as well as general acceptance of the need for our advice to be considered during the reengineering of processes, not just after new processes are already put into place.

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY (PCIE)

By Executive Order 12301, the President's Council on Integrity and Efficiency (PCIE) was created in 1981 to "coordinate and enhance government efforts to promote integrity and efficiency" in Federal programs. In addition

to the 28 Presidentially appointed and Senate confirmed IGs, its membership includes the Deputy Director of Management of the Office of Management and Budget, who serves as Chair; the Controller of the Office of Federal Financial Management; the Associate Deputy Director for Investigations of the Federal Bureau of Investigation; the Director, Office of Government Ethics; the Special Counsel of the Office of Special Counsel; and the Deputy Director of the Office of Personnel Management. (Executive Order 12805, signed May 11, 1992, made changes to the original Executive Order to reflect the changes made in 1988 to the IG Act.) The PCIE has 6 committees in which issues are examined in detail. They are the Audit Committee, the Inspections and Evaluations Committee, the Investigations Committee, the Legislation Committee, the Professional Development Committee, and the Integrity Committee.

As you know, the Inspector General community is a large and diverse one. While all the IGs who sit on the PCIE share a broad common mission, they have many differences ranging from the size and makeup of their operation to the specific focus and mission of the Department in which they operate. The great strength of the PCIE has been as a forum to bring together the IGs,

establish agreement on issues of common concern, such as quality standards and training, and encourage them to share and learn from an exchange of "best practices" and "lessons learned."

I became the Vice Chair of the PCIE in January 1998 and, in that capacity, want to share with you some of the positive contributions we believe the PCIE has made to the IG community and, in turn, to the goal of good government. Along those lines, recent and ongoing PCIE efforts have included:

- Review of the Next Generation of Card-Based Payment Systems (March 1997) - The PCIE issued a report prepared with the participation of the Chief Financial Officer's Council, on issues and concerns that need to be addressed as the government moves to increased use of credit cards for travel, purchase, and fleet card services.
- Quality Standards for Investigations (September 1997) - The PCIE reviewed earlier investigative standards for the IG community and updated them to reflect, among other things, the increased use of technology in investigations.

- Prescreening of Federal Grants and Loans by Offices of Inspector General and Their Agencies and Loan Offices - (January 1998) - The PCIE examined procedures used by the IGs and their respective agencies to review Federal assistance projects. This review has permitted the sharing of information among IGs about ways to prevent as well as detect waste, fraud and abuse by Federal grant and loan recipients.
- Working Relationships of IG Inspection and Evaluation Units (January 1998) - This survey of Inspection and Evaluation offices within the IGs identified and shared successful practices used in those offices.
- IG Investigations and You (April 1998) - Based on concerns raised by this subcommittee, the PCIE has formulated a general informational pamphlet for the IG community which can be customized for each Inspector General to distribute within their own department.
- Investigative Training - The IG community established an IG Criminal Investigative Academy (IGCIA) in Glynco, Georgia in 1993. After completion of course work at the

Federal Law Enforcement Training Center, IG special agents then receive follow-on training specifically designed by the IG community.

- Audit Training - In 1991, the IG community also created the IG Auditor Training Institute (IGATI). IGATI stands alone as the only organization whose purpose is to address the unique training needs of Federal auditors.
- Audit Standards - The PCIE is working with the General Accounting Office to create one manual for the government for financial statement audits to address the many new issues emerging in government financial management.

The PCIE fully recognizes the importance of maintaining the integrity of the office and has, over the years, attempted to address concerns about accountability of Inspectors General, an issue also before this subcommittee. The PCIE supported and was instrumental in the drafting of Executive Order 12993, issued March 21, 1996. That order established the PCIE Integrity Committee, chaired by the FBI, as a formal mechanism empowered to review and, if appropriate, investigate allegations against IGs and certain senior staff members of IGs. If their

investigation justifies further action, the Committee's report is forwarded to the Chair of the PCIE who, in turn, forwards it to the head of the agency involved for appropriate action. This Executive Order formalizes what had been an Allegations Review Subcommittee under the Integrity in Law Enforcement Committee, which the PCIE created in 1990. Prior to 1990, the PCIE had an informal working group which was a clearinghouse for allegations against IGs and their staffs.

The PCIE fully understands that integrity is, above all else, key to the credibility of individual IGs as well as the entire Inspector General community. With a formal process now in place as a result of the Executive Order, we intend to continually work with the Integrity Committee to help insure professional and timely investigations in this most critical area.

CONCERNS FOR THE FUTURE

I understand that the Subcommittee is interested not only in the major issues facing IGs today but also in ways in which the IGs can be strengthened for the future. I would like to conclude by focusing on what I see as some

areas of growing concern for the Inspector General community. There are several emerging issues that cut across the community. These include:

- **Cyber Fraud:** The potential for criminal activity in the cyber environment continues to grow as government agencies increase reliance on electronic commerce and processes. This creates not only a need for increased IG focus but also for specialized skills training and expertise throughout the IG community. This is a growing area of difficulty for IGs, not only in competitively attracting individuals with this expertise, but also in training and maintaining these skills in-house.
- **Record Retention and Digital Signatures:** As government and industry move to a paperless environment, there is a need to determine what records should be maintained in a non-electronic format. The move to electronic commerce and electronic filing systems has also raised the need to develop digital signatures that would authenticate original documents. Obviously, these are areas of concern for prosecutorial and law enforcement agencies, including the IGs, since they could substantially impact

the government's ability to obtain the proof required for criminal prosecutions.

- **Outsourcing:** As efforts to streamline government continue, agencies are being encouraged to outsource functions that have been performed in-house. As IGs are increasingly relied upon to perform independent validation of outsourcing studies as required by OMB Circular A-76, this will create additional resource burdens for the community. Moreover, as outsourcing continues, there are legitimate questions about the extent to which government can maintain adequate oversight of the taxpayer dollars being directed to the private sector.
- **Potential amendments to the False Claims Act:** Members of industry have recently suggested changes to the False Claims Act, Section 3729-3733 of Title 31 United States Code. The Act has been an invaluable tool to the IGs and others in efforts to combat fraud against the government. Some recent proposals would limit the impact of the Act by raising the required standard of proof and decreasing the amount of applicable penalties. While some have suggested that the Act subjects simple innocent mistakes

to unreasonable penalties, that argument is inconsistent with the clear language of the Act. What is undisputed is the fact that the Act has been a significant player in government efforts against fraud and abuse: in the last five years (FY 1993-1997) \$844,714,737 was collected as a result of DoD investigations of False Claims Act violations.

- Resources - Now may be the appropriate time to explore innovative ways to insure needed resources for Inspectors General, including such things as asset forfeiture, retention of a portion of recovered penalties, and variations of the concepts embodied in the Health Fraud and Abuse Control Program, created in the Health Care Insurance Accountability and Portability Act (P.L. 104-191). As I have reported to the DoD and Congress on several occasions, including my last three IG semiannual reports to the Congress, I am very concerned that ongoing budget cuts at the DoD IG will adversely impact the adequacy of audit and investigative coverage of high risk areas. To be frank, my biggest concern has not been with the current provisions of the IG Act, which for the most part, have served us well. Rather, the biggest problem for my organization has been the continuing difficulties

we face in coping with programmed downsizing. We have undergone staff reductions of 21 percent since 1995 and are currently scheduled to undergo further cuts of an additional 16 percent in the next three years. Despite our significant efforts at reengineering, we are quickly reaching the point where we can no longer overcome increasing workload demands with productivity increases while continuing to downsize. This is occurring during an era of turbulence and considerable risk for all of government as it struggles with the introduction of new processes, reorganizations, downsizing, increased stress on the workforce, outsourcing, and increased reliance on automated systems. Inadequate investment in a sound and effective Inspector General effort compounds the problems and the risks already facing government. There is no question that professionalism, independence and accountability are essential to effectiveness in IG efforts but, so too, are adequate resources.

In closing, let me assure you that I, and my colleagues in the PCIE, stand ready to work with you to improve and strengthen the entire Inspector General community.

Mr. Chairman, that concludes my prepared remarks. I would be happy to take any questions.

Mr. HORN. Thank you very much for that very full statement. I don't know if the Pentagon is the 800-pound gorilla or HHS is the 800-pound gorilla in this town, but we now have June Gibbs Brown who has a distinguished career in this area, inspector general, Department of Health and Human Services. Welcome.

Ms. BROWN. Thank you, Mr. Chairman, particularly for the opportunity to testify on this 20th anniversary of the Inspector General Act. It is fitting that a hearing will take stock of the IG's and it should be presided over by this committee, I believe, which has been so instrumental in our creation, promotion, and development.

I have had the unique advantage of being a participant in much of the evolution of Federal IG's, having served as IG in five different agencies since 1979, and I might mention the only survivor of the mass firing that was mentioned earlier. It seems that only yesterday I testified here at the oversight hearing on the occasion of the 10th anniversary of the IG Act. With your permission, Mr. Chairman, I would like to hereby reserve a seat for 2008, when we have the 30th anniversary of the IG Act.

Mr. HORN. With or without term limits, I think.

Ms. BROWN. Yes. I believe the last two decades have demonstrated the overall structure of the IG Act is sound and does not require fundamental change. Certainly, there are occasional roadblocks to OIG effectiveness, and I will discuss some of these later in my statement. First, let me address what I believe to be some of the most important challenges facing the IG as we enter the third decade.

Rightly or wrongly, many view the IG as focusing exclusively on enforcement with an eye only toward prosecution or recovery of misspent funds. Of course, enforcement is and always has been a critical function of the IG, but we at HHS are keenly aware that the IG Act also directs IG's to prevent fraud and abuse.

We are proud that we have stepped up our activities designed not just to uncover existing fraud and abuse, but to avoid it. These include issuing advisory opinions and special fraud alerts, developing model compliance plans in conjunction with industry, which we asked them to pledge to follow using corporate integrity agreements, and those are in cases where somebody has already committed an offense and they are negotiating a settlement in beneficiary outreach.

The Government alone certainly cannot solve the problem of fraud. Instead, through preventive efforts such as these, we must inform and educate the public and enlist their help in avoiding improprieties. Those who have worked with me will confirm that I am adamant that there be coordination within the OIG, the department—and with other departments, our partners in enforcement and oversight throughout Government. Gone are the days when investigators worked only with investigators and auditors only with auditors.

Now an OIG investigative team might be comprised of one or more investigators, statisticians, auditors, attorneys, all working together to unravel complex fraud schemes. The Government is undergoing a marked shift in how it addresses Federal programs. Indeed, with the Government Performance and Results Act, new em-

phasis has been placed on an agency's ability to measure its own performance against clearly stated goals.

So the question remains, how best to evaluate OIG performance? The most obvious measurement, of course, is quantitative. How many investigations or audits were undertaken? How many convictions resulted, and how much money was returned to the Federal coffers? But measuring our prevention effort is more elusive. Sometimes we can rely on external calculations, like the Congressional Budget Office's estimate of savings resulting from legislative changes that we recommended.

More often, no such objective estimates exist. In the coming years, the IG's must work to develop meaningful performance measures other than the monetary ones and will access the full breadth of OIG's efforts.

Let me now turn briefly to some more specific barriers to OIG operations. Concerns have been expressed that the pool of experienced, qualified, willing candidates for positions as IG's may be shrinking. One possible disincentive to accepting an IG appointment is lack of a term of office. Changes in administration sometimes cause lengthy periods of uncertainty in the community and that can inhibit OIG operations. A fixed term of office, in my view, would contribute to job security for those considering service as an IG and would ensure the continuation of important OIG investigations and audits even during a period of transition.

I next offer the following suggestions to improve OIG reporting processes. There is a proliferation of mandatory reports, and I have perceived a recent rise in bills that would compel IG's to perform specific reviews. A rise in the number of compulsory reviews diverts OIG resources from pressing discretionary inquiries and should be avoided. We would welcome this committee's assistance in this regard.

Regarding annual reports, we have a highlight section. We have no objection to the proposal to change the semiannual reports required by the IG Act to annual reports. Our HHS report would be lengthier, but we would continue to include an introductory section that highlights and directs readers to the most significant items.

Another possible amendment might be to limit the number of audits listed in the semiannual report, as required, to those where findings exceed a certain dollar threshold, such as \$25,000. We would have decreased our reports last year by about 75 where the summaries were required. And I mentioned that in my written statement.

Seven-day letters, I believe, should continue to be used only as a last resort when other avenues for corrective action have failed. Moreover, I would like to say that the 7-day letter authority, though rarely invoked, is very useful. The mere availability of such a crisis report serves as an incentive to resolve problems before a 7-day letter is issued.

Ten years ago my predecessor as HHS IG testified here on the need for law enforcement authority, yet this matter remains unresolved a decade later. Law enforcement tools are critical to effective fraud investigation and to the safety of OIG personnel. The Justice Department has technically acknowledged our need for such pow-

ers by authorizing virtually all of our criminal investigators to be deputized as deputy U.S. marshals.

As a result, statutory law enforcement authority would not enlarge our current authorities, which is exercised under deputation now, but would ease the administrative burden and uncertainty of those deputizations. We believe that it is time, even past time, to confer HHS criminal investigators with this statutory law enforcement authority that they have already been responsibly and effectively exercising.

Accordingly, we are pursuing this legislative proposal, within the executive branch under the pertinent administrative policy statement and hope to present it to Congress in the near future.

Thank you again for the invitation to testify today. While my remarks have identified potential amendments to the IG Act, I do not believe that a wide restructuring of the IG Act is necessary or wise. This concept, created 20 years ago, of an internal yet independent unit within each Federal agency charged with preventing and detecting fraud and abuse in that agency has, in my belief, proved a success.

Thank you.

Mr. HORN. Well, thank you for that very thorough statement. You have raised a number of questions I want to get to in the question period.

[The prepared statement of Ms. Brown follows:]

**Statement of
June Gibbs Brown, Inspector General
Department of Health and Human Services**

Introduction

Mr. Chairman, thank you for the opportunity to appear and testify in today's oversight hearing marking the twentieth anniversary of the Inspector General (IG) Act of 1978. It is fitting that a retrospective look at Federal Inspectors General (IGs) should be presided over by this Committee, which has been so instrumental in our creation, promotion and development.

I am also personally gratified to be asked to testify concerning the evolution of statutory IGs in the Executive Branch. I have had the unique advantage of being a participant in much of this evolution, having served as the Inspector General in five different Federal agencies since 1979.¹ I was also privileged to serve as Vice-Chair of the President's Council on Integrity and Efficiency (PCIE) from 1994 to 1997, during which time I had the opportunity to work with the entire IG community on issues of common interest.

I must note that I testified before this Committee as the sitting Inspector General of the Defense Department, at the oversight hearing on the occasion of the *tenth* anniversary of the IG Act in 1988. With your permission, Mr. Chairman, I would hereby like to reserve a seat to testify at the hearing marking the 30th anniversary of the IG Act in the year 2008.

The Office of Inspector General (OIG) at HHS is actually celebrating its 22nd birthday. We were established as the first statutory OIG in 1976, and just two years later, our legislation served as a model for statutory IGs throughout government. Our 22-year history has been an eventful and productive one; it would be difficult to mention even the highlights within the limits of a hearing. So at the request of the Committee, I would like to focus my remarks on my observations of some issues facing the IG community today, and changes that might help the IGs better realize the promise of the original legislation.

In a nutshell, I believe that the last two decades have demonstrated that the overall structure of the IG Act is sound and does not need to be fundamentally altered. Certainly there are occasional roadblocks to OIG effectiveness that could be legislatively removed; I will discuss some of these later in my statement. But first, I would like to address what I believe

¹ The Department of the Interior, the National Aeronautics and Space Administration, the Department of Defense, the Social Security Administration and currently, the Department of Health and Human Services. I also served as the Inspector General of the Pacific Fleet; a position not covered by the IG Act of 1978.

to be some of the most important challenges to be met by IGs as we enter our third decade. They are: fulfilling our dual role to both detect *and prevent* fraud, waste and abuse; fostering collaboration both within and outside the various OIGs; and learning to meaningfully measure our performance.

Prevention as well as Enforcement

Rightly or wrongly, many currently view the Inspectors General as focusing almost exclusively on enforcement, with an eye toward prosecution or recovery of misspent funds. Such enforcement has been and remains a key role of the Inspectors General. After all, wrongdoers must be identified and removed from continued abuse of Federal programs, and their ill-gotten gains returned. Thus, individual audits, investigations and evaluations serve critical functions — to protect the fiscal integrity of programs such as Medicare, to safeguard their beneficiaries, and to deter other would-be abusers.

We at HHS are also keenly aware that the IG Act directs IGs both to detect and prevent fraud and abuse in agency programs. Preventive efforts can amplify the effectiveness of OIG activities by instituting legislative, regulatory and operational change in a given program or operation. We are proud that we have recently redoubled our commitment to activities designed not just to uncover existing fraud and abuse, but to avoid it. Most of these efforts, described briefly below, are based on the realization that the Government, alone, cannot solve the problem of fraud. Instead, we must inform and educate the public, including the provider and beneficiary communities, and enlist their help in avoiding impropriety. For example:

- **Beneficiary Outreach** - The OIG is engaged in an ongoing project with HHS components and various advocacy groups to implement an outreach campaign to educate beneficiaries and others who work directly with the elderly to recognize Medicare and Medicaid fraud and abuse when they encounter it, and to know how and where to refer it.
- **Model Compliance Guidelines**: As part of our effort to promote voluntary compliance with applicable statutes, regulations and program requirements, the OIG is working with the industry to develop and issue a series of compliance guidelines tailored to individual health care services. For example, we have already issued model guidance pertaining to hospitals and clinical laboratories. Other guidelines are in the works. We believe that these models will assist health providers in averting fraud and abuse or detecting it at an early stage when it is more easily corrected.
- **Industry Guidance**: Under the Health Insurance Portability and Accountability Act (HIPAA), passed in 1996, the OIG now issues formal advisory opinions to the

industry on the legality of business arrangements, thus offering one-on-one assurances that proposed transactions are permissible under HHS rules. We also issue Special Fraud Alerts to warn the industry and public at large of vulnerabilities in the health care industry that make it susceptible to abuse.

- **Corporate Integrity Agreements:** The OIG is committed to including corporate integrity provisions in major settlement agreements reached as a result of OIG investigations or audits. These agreements require the provider to carefully monitor its own activities to ensure that the company complies with applicable rules. Failure to do so may result in the automatic exclusion of the provider from participation in Federally funded health benefit programs.

Another key aspect of our prevention initiatives has been to step up our efforts to exclude offending providers from future participation in Federal health programs. Such exclusions serve the dual purpose of preventing continued payments to providers deemed untrustworthy, and protecting our beneficiaries from substandard care. We are proud that during FY 1997, the first year of the Health Care Fraud and Abuse Control Program established by the HIPAA, the number of such exclusions nearly doubled from 1,408 to 2,719. Most were based on convictions for program-related crimes. Let me add that during the first year of HIPAA, nearly \$1 billion was restored or transferred to the Medicare Trust Funds.

I must note that our recent expansion in prevention efforts has been made possible in part by the increased resources earmarked for health care anti-fraud activities under HIPAA. I believe that these or similar prevention efforts — funding permitting — would prove equally beneficial at other OIGs within the community.

Increased Coordination

A very noticeable evolution in the Office of Inspector General at HHS has been the marked increase in coordination among our components. Gone are the days when investigators worked exclusively with investigators; auditors with auditors, and so on. Now, an OIG investigative team might be comprised of one or more investigators, statisticians, auditors and attorneys, all working together to unravel complex fraud schemes. As you are likely aware, there has even been a new "profession" born of this collaboration — the "audigators" — who are auditors trained at the Federal Law Enforcement Training Center to provide critical financial analysis and support to complex false claims cases.

Those who have worked with me will attest to the fact that I am adamant that there be true collaboration and teamwork within the OIG. I firmly believe that beneficiaries and taxpayers alike are ill-served by rivalries within OIG components, and among law

enforcement agencies. I am proud that our recent history amply demonstrates the benefits of such enhanced coordination.

In addition to internal coordination, the effectiveness of the OIG depends heavily on cooperation with other agencies. Last year, the Government completed a two-year demonstration project, Operation Restore Trust (ORT), which tested whether closer collaboration among law enforcement agencies and the affected program agencies at Federal and State levels would result in greater effectiveness and efficiency in preventing and detecting fraud and abuse in certain targeted health services. ORT confirmed that the combined energies of these enforcement and oversight officials reduce duplication of effort, streamline referrals, and maximize the effectiveness of health care anti-fraud efforts.

In 1996, Congress affirmed the coordinated approach to addressing health care fraud by enacting HIPAA, which requires the Attorney General and the HHS Secretary, acting through the IG, to institute a Health Care Fraud and Abuse Control Program that coordinates "Federal, State and local law enforcement programs to control [health care] fraud and abuse." This approach, to link enforcement efforts from the Federal to the local levels of government, is even more vital as complex fraud schemes continue to proliferate throughout the country.

How to Measure Performance of the Inspectors General?

The Government is undergoing a marked shift in how it assesses the success of Federal programs and operations. As evidenced by the Government Performance and Results Act, new emphasis has been placed on an agency's ability to measure its own performance against clearly stated goals. Some of us in the IG community are still struggling with how best to evaluate the performance of our enforcement and oversight functions.

The most obvious measurement is strictly quantitative — how many investigations or audits were undertaken? how many convictions resulted? how much money was returned to Federal coffers? This numerical assessment is encouraged by our statutory reporting obligations under the IG Act, HIPAA and elsewhere, which require that such figures be reported. But these reports leave the impression that IGs may be too "dollar driven," seeking to justify their existence only through tangible financial recoveries. This is misleading, and devalues our efforts to prevent fraud and abuse.

Measurement of our prevention work is much more elusive. In some cases, we may rely on external calculations, such as the Congressional Budget Office's estimates of savings resulting from implemented legislative recommendations arising from OIG reports. More often, no such objective estimates exist. We are left uncertain how to calculate the benefits derived from prevention efforts such as provider and beneficiary education and outreach,

deterrence arising from well-publicized prosecutions of or settlements with offending health care providers; or exclusion of health care providers from continued participation in programs such as Medicare and the resulting protection of the Trust Funds and the quality of care provided to our beneficiaries.

In years to come, we in the IG community must work within our agencies and the Administration, and with the Congress to develop meaningful performance measures, other than monetary ones, that will more accurately depict the breadth of OIG efforts.

Internal versus External Focus

There continues to be a perception that the proper role for IGs is an internal one; that we should devote our resources to investigating the conduct of agency employees, and auditing the Department's operation of its programs. Certainly these internal reviews are among the most vital and sensitive performed by OIGs. A good example is the annual audit of the financial statements performed under the Chief Financial Officers Act. But we need to correct any misperception that internal reviews are, or should be, our sole focus. On the contrary, our mission to detect fraud in the Department's programs also includes the critical role of investigating and auditing *external* entities — those who receive funds from HHS by way of grant, contract, cooperative agreement, compact or other funding mechanism — to ensure that the funds are properly received and lawfully spent.

If the OIGs of large agencies, such as ours, ever did focus exclusively on internal reviews, it seems to me that those days are gone. Indeed, at HHS, the recent HIPAA legislation that I have often referenced during this testimony, carries this evolution a step further. In that law, the Congress authorized the OIG of HHS to coordinate or conduct investigations, audits and inspections "relating to the delivery of and payment for health care in the United States," whether the services were paid by Medicare, or by *wholly private insurance*. With this, the OIG is authorized to expand even beyond the boundaries of the parent agency to oversight of health care generally. The HIPAA model is an unusual one; but it does illustrate that a dual role of both internal reviews, and external investigations and audits, best ensures the continued integrity and solvency of our agency programs.

Let me now turn to some more specific issues facing the IG community that relate to the powers, authorities and requirements of the IG Act.

Recruitment and Retention of IGs

In our conversations, Subcommittee staff reported that concerns have been expressed that the pool of qualified, willing candidates for positions as Inspectors General may be shrinking. If this is so, it may be attributable to certain disincentives to IG service, among them, the uncertainty of continued employment, particularly during changes in administration.

- **Term of Office:** In creating statutory IGs, Congress intended to insulate these officials from political influences. For example, the IGs must be selected without regard to political affiliation and solely on the basis of merit. If we are to be appointed without regard to political affiliation, we should be permitted to serve that way, too. However, history has shown that changes in administration may cause lengthy periods of uncertainty in the IG community. Many months can go by while IGs await news of whether their services will be continued under a new administration — the resulting “limbo” can inhibit OIG operations and staff. A fixed term of office would eliminate this uncertainty, and foster “business as usual,” even during a transition period. This would contribute to job security for those considering service as an IG. Of course, any term of office must be drafted so as not to impede the President’s ability to remove an Inspector General when warranted.

IG Reporting

The Subcommittee has asked whether I have suggestions on how to improve the quality or procedures for OIG reporting. I do.

- **Proliferation of Mandatory Reports:** First and foremost, I urge this Committee to assist the IG community in attempting to avert a troubling trend toward legislation that compels IG’s to perform specific audits and investigations, usually without a commensurate increase in resources to accomplish these reviews. I, for one, am very concerned that the mounting number of compulsory reviews diverts OIG resources from pressing and time-sensitive discretionary inquiries. Instead, each IG should be allowed the fullest measure of discretion possible in assigning resources to priorities within his or her respective agency. Alternatively, legislation that assigns extensive new auditing responsibilities to agency IGs should also include the resources necessary to accomplish them.
- **Annual Reports: Highlights Section** - It has been suggested that the Semiannual Reports currently required by the IG Act should be changed to annual reports. We would endorse such a modification. Although our HHS report, already quite long, would be even lengthier, we would continue to include an introductory section that highlights and directs the reader to significant reviews during the reporting period.

Part of what contributes to the sheer volume of the HHS Semiannual Reports is the requirement that they include a listing of all audit reports, regardless of dollar amount, for which no management decision has been made. It would ease the administrative burden and shorten the Report, to permit IGs to limit this listing only to those audits where findings exceed a dollar threshold (perhaps \$25,000). Those audits would continue to be resolved as usual; but they would not be individually listed in the Semiannual Reports.

- **7-Day Letters** - Under section 5(d) of the IG Act, an IG is to "immediately" alert his or her respective agency head in writing of any "particularly serious or flagrant problems, abuses, or deficiencies." The agency head must, within 7 days, transmit this report to the Congress. Though the agency head may separately comment on the report, he or she may not alter it.

On occasion, IGs are questioned about our sparing use of these "7-Day letters." I believe that these reports should be used only in the most serious circumstances, as a last resort when other avenues for corrective action have failed and immediate Congressional attention or intervention is warranted. This does *not*, however, mean that we fail to keep the Secretary or the Congress informed of imminent problems and deficiencies. On the contrary, through our Semiannual Reports, through personal meetings with the Secretary and Committee staffs, through our frequent testimony before the Congress, and otherwise, we communicate regularly with the Secretary and with Congressional oversight officials on matters of importance. Moreover, I believe that the 7-Day Letter provision of the IG Act, though rarely invoked, is a success. The mere availability of such a direct "crisis report" to the Congress serves as an incentive to resolve serious deficiencies before a 7-Day Letter is issued.

Law Enforcement Authority

I would be remiss if I did not address the issue of statutory law enforcement authority — that is, authority to execute search and arrest warrants, make arrests without warrants in certain circumstances, and carry firearms — for qualified investigators of the HHS Office of Inspector General. Ten years ago, my predecessor as Inspector General of HHS testified here on the urgent need for such tools, yet the matter remains unresolved a decade later.

Law enforcement authorities are central to the effective investigation of fraud against HHS programs and operations. More importantly, they are critical to the safety of OIG personnel.

Our need for law enforcement powers is amply illustrated by the fact over 95 percent of our 229 criminal investigators are currently deputized as Special Deputy U.S. Marshals under a variety of "blanket deputations," covering health care cases, "deadbeat parent" cases and others. These deputations constitute a clear recognition by the Department of Justice that law enforcement tools are necessary to the effective and safe accomplishment of HHS investigations. A statutory grant of law enforcement authority would not enlarge the authorities that we are *already* exercising under deputations, at HHS; but legislative authority would remove the administrative burden and uncertainty of temporary, limited deputations.

We believe that it is time, even past time, to eliminate the piecemeal approach of our several blanket deputations, and confer upon HHS criminal investigators the statutory law enforcement authorities they have already been long and properly exercising. Relying on a patchwork of deputations for our law enforcement authority also raises more liability issues, not only for the OIG generally, but also for individual special agents.

We are pursuing this legislative proposal within the Executive Branch, in accordance with the Administration Policy Statement concerning statutory law enforcement, and hope to present it to this Committee and the Congress in the near future.

IG's Role in the Department

As a final matter, there has long been a debate over whether an Inspector General should properly be housed within the agency that he or she monitors. The fear is that if the IG has a close working relationship with the Secretary and is an integral part of agency management, the IG will be co-opted, and, as the cliché goes, turn from a watchdog to a house pet. I couldn't disagree more strongly.

At HHS, I am fortunate to enjoy an excellent and close working relationship with Secretary Shalala. Her very visible support of OIG efforts has served to mobilize management throughout the Department to greater awareness of fraud and abuse in the administration of agency programs, and to foster cooperation with IG inquiries. In addition, my participation as a full member of the Department's senior staff ensures that issues of waste, fraud and abuse will be considered as management decisions are made at the highest levels of HHS. I believe that isolating the IG from agency management would do serious damage to our ability to prevent and detect fraud and abuse.

Ironically, while some in Congress may be uneasy that Inspectors General will lose a measure of independence by working in partnership with agency managers, those agency managers similarly wonder whether the IGs are aligned too closely with Congress (indeed, I do have an effective working relationship with many Committees of the House and the

Senate). I am actually comforted by this continuing tension. I believe it signals that the balance between the IG's "two masters" is fostering the independence envisioned by the Congress in creating OIGs.

Conclusion

Thank you again for the invitation to testify today. While my remarks have suggested certain provisions of the IG Act that may warrant closer examination, I do not believe that a wide restructuring of the IG Act is necessary or wise. The concept, created by the Congress 20 years ago, of an internal yet independent unit within each Federal agency charged with preventing and detecting fraud and abuse in that agency, has, in my belief, proved a success. I welcome your questions.

Mr. HORN. The next and last inspector general in this panel is the honorable Susan M. Gaffney, the inspector general of the Deputy of Housing and Urban Development. Welcome.

Ms. GAFFNEY. Thank you, Mr. Chairman.

Having had the opportunity to listen to what everyone else has to say, I think I hear one area of consensus, and that is that there is a need to look at the smaller OIG's and that organizational setup. Other than that, from my perspective, I think term limits are a bad idea. I would like to keep the semiannual reports. We desperately need law enforcement authority, but that's not really what I want to talk to you about.

I want to talk to you about something a little different than anyone else has talked about. Let me first say, though, I agree with June, the most important thing is the IG Act has worked extremely well. We are not stuck. We've been making changes. We are very dynamic, and the act has accommodated those changes. So I commend all of the people who worked on the act; it has done us well for 20 years.

But the real thing I want to talk to you about is, it is very easy to sit on the panel and say, it is vitally important that the IG be part of the agency team. And I think we would all agree that that would be very nice. But I think we should recognize that that doesn't always happen. And there are some reasons for that.

First of all, I would never have agency program officials, Sherman, to my house for dinner. I don't socialize with them. That is not within my construct, and I fear it, so I stay away from it.

But one of the factors you need to understand is when political appointees come into office, from my perspective this is—they generally come in for a very limited tenure, 18 months, 2 years—second, they have a great need to make a splash. That means that their concerns are often quite different from the IG concerns. We are very much geared to institutional kinds of things, long term, making the agency viable; that's quite different from how one goes about making a splash.

When you want to make a splash, you need to do very visible things that will get a lot of press coverage, not the kinds of boring, mundane kinds of things we are always working on.

A second consideration is that when people come into the Federal Government from outside, IG's are often seen as alien creatures. I don't know where in the private sector they really have anything like us. We certainly are not internal auditors in the sense that the private sector has internal auditors, and typically what I have seen is a political appointee sees us just like the rest of their principal staff.

So this is not good. We need to be collaborating, we need to be working together now, today even more than ever before. Because I agree with what everyone has said here today, and that is, in fact, our Government is more vulnerable to waste, fraud, and abuse than it has ever been because of the contracting out, the downsizing. The IG's are tremendously important in terms of internal controls.

So how then can we go about fostering this collaboration between management and the IG's? And I think one of the answers that no one here has discussed is, you know, what typically happens is the

political appointees go into an agency, no one has spoken to them about the IG's. No one has really explained to them what an IG is in the Federal Government, nor said to them, "We expect you to work with and support and not fight your IG. This is supposed to be a team."

Well, if that isn't said to them by the executive branch, the Executive Office of the President, nor is it said to them by the Congress, then it falls to me, the IG, to convince them of this. That is a very tough job. And my message to you is being an IG is not easy. It is a lonely job, and we need some help.

We need some help in letting agency heads know what's expected of them in terms of the IG's. We need better mechanisms in the Executive Office of the President in hiring IG's. We need more involvement by the Congress in the hiring of IG's. As John Layton said, we need better mechanisms for firing IG's who aren't doing good jobs, and we need the Congress involved in that, too. And that's what I would like to see coming from this hearing. It's very important to me.

Thank you, sir.

[The prepared statement of Ms. Gaffney follows:]

**STATEMENT OF
SUSAN GAFFNEY, INSPECTOR GENERAL
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**BEFORE THE SUBCOMMITTEE ON GOVERNMENT
MANAGEMENT, INFORMATION AND TECHNOLOGY**

CONCERNING THE INSPECTOR GENERAL ACT OF 1978 AS AMENDED

April 21, 1998

Chairman Horn and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the Inspector General (IG) Act of 1978 and current issues in the IG community. It gives me special pleasure to participate in this hearing since my entire Federal career, starting in 1979, has revolved around Office of Inspector General (OIG) operations or issues; and, for the past 5 years, I have had the privilege of serving as the IG at HUD.

I believe the IG Act with its 1988 amendments has been an extremely important and successful piece of legislation. It has provided a road map that can be easily followed: promote economy, efficiency, and effectiveness; and prevent and detect fraud and abuse. Not too long ago, when some issues of disagreement between the Department and my office were being depicted in the press, I was asked by a reporter if I found it difficult to do my job. My response was that an IG's job is really pretty easy--just do the right thing and objectively report what you find. What could be any simpler?

While an IG's primary role has not changed over the past 20 years, the challenges that an Office of Inspector General faces today are quite a bit different from the ones faced in 1978. At HUD, budgets have grown, programs and activities have expanded, and technology has dramatically changed the way business is carried out. At the same time there has been a general downsizing of the workforce, an increased reliance on contractor support, and an expectation that HUD will be run more efficiently. It is especially vital during periods such as these that OIGs provide necessary oversight of programs and operations and assure the efficient expenditure of tax dollars. And, while our resources have increased somewhat, the potential workload is immense. So, what have we done as an organization to meet these new challenges and carry out the daunting responsibilities the Congress has entrusted to us?

I have taken the liberty of attaching our Mission Statement and Values. One of the HUD OIG values is that "operations are focused on substance rather than process and rely on innovative as well as traditional methods to address issues of significance having potential payback in terms of improved integrity,

effectiveness, and efficiency." This core value has been the driving force behind some dramatic changes to the way we carry out our statutory mission. For example, a little over 4 years ago we began an initiative called Operation Safe Home.

Briefly, Operation Safe Home focuses on major types of wrongdoing that undermine HUD programs and ultimately affect the residents of public and assisted housing. The two principal areas of focus are violent crime in public and assisted housing and equity skimming in multifamily insured housing. Operation Safe Home differs from traditional OIG work in that it is highly targeted and proactive; it employs non-traditional techniques; and it represents a long term, sustained commitment to reducing the targeted vulnerabilities. Through the creative and aggressive efforts of our auditors and agents, criminals have been jailed, significant funds have been recovered, and changes have been made to programs that will hopefully eliminate the potential for future wrongdoing.

Of equal importance is the fact that we have seen evidence that these efforts are having a deterrent effect. For example, the equity skimming aspect of Operation Safe Home has become an agenda topic at trade meetings attended by owners of HUD insured multifamily projects. At projects where we have been successful in eliminating the criminal element and initiating post-enforcement measures, residents comment about the improved quality of life.

Despite the huge investment of federal dollars, many public and assisted housing developments have become major breeding grounds for violent crime, with law-abiding residents, many of them elderly, locked in their homes, terrorized by gangs and drug activities. During the last 4 years, Operation Safe Home has pursued its goal of focusing the attention of Federal, state, and local law enforcement on violent crime in public and assisted housing. To successfully accomplish this, our special agents had to become players on law enforcement task forces targeted to public and assisted housing, in addition to carrying out their white collar investigative responsibilities. This entailed a significant commitment to training with respect to firearms, undercover work, special tactics, etc. And, just this past month, I signed a Memorandum of Understanding with the Director of the Drug Enforcement Administration that provides conditions under which HUD OIG agents may be authorized to investigate drug related activities under Title 21--certainly a very non-traditional role for an OIG.

To compensate for the commitment of 50% of our investigative resources to the violent crime arena, we have retooled the strategies and techniques for aggressive pursuit of equity skimming violations. In the context of Operation Safe Home, equity skimming is the illegal diversion of money out of HUD-insured multifamily projects by private sector owners and/or management agents. The consequences of equity skimming are often extreme: owners cease making mortgage payments, which means that HUD eventually has to

pay insurance claims; and projects deteriorate physically, in the process often becoming victimized by the criminal element. In addition to pursuing criminal equity skimming cases, we are now using civil enforcement opportunities and streamlining referrals of civil cases to the U.S. Attorneys for prosecution. Equity skimming civil referrals are now made directly by our auditors--another illustration of how we have had to change to face the new challenges confronting OIGs. What I think is important in both examples above is that the IG Act as written provides the authority and flexibility to try new approaches.

In our quest to bring about positive change in HUD programs and operations, the HUD OIG has also significantly changed its approach to the financial statement auditing required under the CFO Act and to regulatory and legislative activities. We have found the financial statement audit to be an extremely beneficial exercise, much to the surprise of some of our own staff. When the CFOs Act first passed, many in the OIG dreaded the commitment of resources, both dollars and staff, that were going to be required to meet the statutory time frames. Rather than contract out the entire process to public accounting firms, the HUD OIG made a conscious decision in the early 1990s that it would perform the consolidated audit of HUD and contract only for the audits of FHA and GNMA. The rationale for doing so was twofold. First, we wanted to demonstrate to the Department the OIG's commitment to financial management and its willingness to help them get their financial house in order. Second, conducting the consolidated financial audit would provide HUD OIG auditors with an overview of HUD programs and the associated management controls, thus helping us to better focus our audit resources.

The financial statement audit has also proven to be a valuable tool to HUD. In the seven years we have been doing the audit under the CFOs Act, HUD has improved its financial and management controls to move from our disclaiming an opinion to having a qualified opinion.

Rather than just auditing programs/activities/operations after they have been implemented, over the past couple of years the HUD OIG has placed increasing emphasis on preventing problems through careful review of and comment on proposed regulations and legislation. Because of our institutional memory, which crosses all programs and operations, we are in a somewhat unique position to provide significant recommendations and suggestions to improve controls and minimize risks before programs are implemented. Additionally, for the past two years our office has, based on its audit and investigative work, developed specific legislative proposals for the Congress to consider. I view this as an important role for an IG, since it is sometimes not feasible for a Secretary or agency head to introduce legislation that may be needed, but would not be popular with important constituency groups.

Your invitation letter asks for my thoughts on current issues facing IGs and changes that can be made to strengthen the IG concept. There are several issues that I believe need to be addressed.

One issue that needs to be addressed: over the past 20 years, the question "who watches the IG" has been asked repeatedly. Unfortunately, we still don't have an adequate answer.

- In the mid to late 1980s, the General Accounting Office provided oversight of OIG operations. However, these reviews are no longer routinely performed by the GAO.
- The IG Act Amendments of 1988 required peer reviews for all Federal audit organizations. While these peer reviews have been performed on a 3 year cycle and have been generally beneficial, they are narrowly focused on compliance with audit standards.
- For years, the President's Council on Integrity and Efficiency (PCIE) struggled to find an appropriate mechanism for dealing with allegations of wrongdoing by IGs or their principal staff. To the credit of the PCIE and the Executive Office of the President, this issue was finally resolved by a 1996 Executive Order, which laid out specific procedures for handling such allegations, under the leadership of the Federal Bureau of Investigation.
- The Congress has sporadically held hearings such as this one today to provide general oversight, and there have been specific hearings to deal with particular IG offices.

In my opinion, two things are missing from this picture: a regular, routine means of OIG oversight; and a mechanism for dealing with specific allegations against IGs and OIGs that do not involve wrongdoing. Such allegations could involve failure to comply with professional standards, inefficiency, ineffectiveness, or bad judgments.

A second issue that needs to be addressed: our office confronts a problem in recruiting and hiring recent college graduates. While it is difficult to compete with private industry salaries and benefits to obtain the best and brightest graduating seniors, it becomes even more difficult because there is no flexibility in OPM rules. As the Federal government continues to downsize and OIGs more and more become the primary monitor of agency programs recruiting and hiring a high caliber work force are essential. Again, I don't have a simple answer but your help in looking at the issue would be greatly appreciated.

A third issue that needs to be addressed: over the past year, the HUD Secretary and his key aides have engaged in a number of

debates with the HUD OIG. They have asserted that the "general supervision" language in the IG Act means that the Secretary should issue OIG audit reports; the HUD Office of General Counsel, rather than the PCIE Integrity Committee, should investigate allegations of wrongdoing by the HUD IG; IG public relations should be controlled by the HUD Office of Public Affairs; and the Secretary should control work to home use of government vehicles by OIG criminal investigators. They have also asserted that the OIG does not have direct access to all agency records and personnel; and the Secretary is not required to sign the letter transmitting the OIG's semiannual Report to the Congress. They developed plans for an Enforcement Center apart from the OIG that would conduct criminal investigations; and they are allegedly now developing a legislative proposal to give the Enforcement Center subpoena authority. Some of these issues have been resolved; some have not been resolved. But, in my opinion, they all reflect a fundamental lack of understanding or acceptance of the IG concept and the IG Act.

The IG concept is alien to appointees from outside the Federal Government. And, when such appointees grasp the concept, it often makes them uncomfortable. Getting over these hurdles shouldn't be the job solely of the IGs. The Executive Office of the President and the Congress need to make sure that top political appointees, at the outset of their tenure, understand the IG Act and understand that they are expected to support it.

Similarly, to ensure the best qualified IGs, I don't think we need changes to the IG Act. I do think we need a better process in the Executive Office of the President and more active involvement by the Congress.

A fourth issue that needs to be addressed: because of our Operation Safe Home violent crime work, it is clear to me that the HUD OIG needs statutory law enforcement authority. (We currently have law enforcement authority under a blanket deputation from the U.S. Marshals Service, which deputation is renewable every two years.) I am currently discussing this matter with Administration officials. It would also make sense for the HUD OIG to have asset forfeiture authority, so that we could ensure that proceeds from law enforcement operations in public and assisted housing are put back into public and assisted housing. I have submitted a legislative proposal to this end to the HUD authorizing committees.

That concludes my list of IG-related issues that I believe need to be addressed. You will note that my list does not include some changes that have been proposed, notably changes with respect to OIG reports to the Congress and terms of office for IGs.

Various parties have proposed that the semiannual reporting requirement in the IG Act be changed to an annual reporting requirement; and that the required reporting elements in the IG Act be streamlined. To my understanding, these proposals reflect Congressional frustration with information overload and an

inability to figure out from disjointed OIG reporting what is really important. I certainly am in favor of streamlining reporting requirements, but I think the more important issue is the need for OIGs to convey information in a fashion that is useful to the Congress. In this regard, I think an expression of expectations from the IG oversight committees would produce highly beneficial results.

At the same time, I would like to maintain the semiannual reporting requirement. The semiannual reports are an extremely useful mechanism for the HUD OIG to summarize our recent findings for both the Congress and the Agency. The semiannual report alerts the Congress to significant issues, and it also motivates corrective action by the Department. I fear that an annual report would contain so much old information that it would become a reference document, rather than an action-motivating document.

I have two concerns about the proposal that IGs have specified (e.g., 5 year) terms of office. First, I don't believe that any IG should be protected from being fired if he or she isn't doing a good job. As discussed above, the problem is that we haven't yet devised sufficient oversight mechanisms to know which IGs aren't doing a good job. Further, getting rid of IGs who aren't doing their jobs is going to require the same two elements needed to ensure hiring the best IGs: better mechanisms at the Executive Office of the President and greater Congressional involvement.

My second concern about the term of office proposal is the effect of the lame duck syndrome. If agency management has a reasonable expectation that the IG will not be around in another year or two, it seems to me inevitable that the IG will lose some of his/her clout with the agency.

Mr. Chairman, that concludes my testimony except to say that, no matter what I told that reporter, being an IG is not easy. I very much appreciate the Subcommittee's support and your providing me this opportunity to testify.

OIG MISSION STATEMENT AND VALUES

The OIG's mission is independent and objective reporting to the Secretary and the Congress for the purpose of bringing about positive change in the integrity, efficiency, and effectiveness of HUD operations.

OIG values are as follows:

- ★ Relationships among OIG components and staff are characterized by teamwork and respect.
- ★ Diversity is valued and promoted in the workforce.
- ★ Excellence in the workforce is fostered through continuing concern for professionalism and career development.
- ★ As a general rule, emphasis is placed on "*doing*" rather than reviewing, by delegating operational authority, responsibility, and accountability to the lowest appropriate level.
- ★ Identifying and meeting client needs in a timely fashion are a primary concern. Clients are defined as the Secretary, the Congress, HUD managers and employees, and the public.
- ★ OIG operations are focused on substance rather than process and rely on innovative as well as traditional methods to address issues of significance having potential payback in terms of improved integrity, effectiveness, and efficiency.

Mr. HORN. Well, I think you are absolutely correct on what you have to say. And I am going to start with that issue, which—you are in the middle of a controversy, I understand. When I returned to Washington late last night, I looked at this Baltimore Sun article of April 17, 1998, and the headline reads: Mayor Schmoke Takes Case to Clinton, Mayor Asks President to Denounce Order for HUD Probe of City, a Matter of Equity, Leaders in Other Cities Also Say Inquiry Has Racial Overtones.

In other words, as I read this story, you are doing your job as inspector general, saving the taxpayers money, investigating, whether you have it on tips or just doing it on a random survey, investigating misuse of millions of dollars in housing authorities. It seems to me that if the administration doesn't back you up, there is going to be a lot of subpoenas issued by Congress to make sure that the inspectors general are protected in any single situation like this. And what we have here is the usual game. We hear it on the House floor, we hear in a case like this, the playing of the race card. Then the question is, How fair was your analysis in where you should have gone to look at particular housing situations? Do you have any comment you want to make on that?

Ms. GAFFNEY. Yes. I haven't made any public comments on this issue, because our plans aren't settled. The cities haven't been finally selected. But, you know—and I will make the statement eventually—I am dismayed and outraged that someone would call me a racist for looking for fraud. I have a statutory responsibility to find fraud. More than that, more important than that, HUD is about helping people who need help. Every dollar of fraud in HUD programs is a dollar taken away from poor people who need help. Who could possibly be against stopping such fraud?

Mr. HORN. I couldn't agree with you more. We should be mad at the people who want to stop that kind of an investigation.

Ms. GAFFNEY. Because the people who are committing the fraud are not the poor people. The people who are committing the fraud are typically very well off.

The other thing I would say to you: most of the HUD activity and funding in cities does not have anything to do with mayors. It goes either directly to the private sector or it goes to a housing authority over which the mayor has very loose control, and, in two of these cities, no control. And so the mayors reacting this way is extraordinary to me.

Mr. HORN. I sit on the District of Columbia Subcommittee of this full committee. I understand what you are going through. So be of good cheer——

Ms. GAFFNEY. Thank you.

Mr. HORN. You will be protected by the Congress without question on something like that.

That gets to the very basis of the reason Congress, on a bipartisan basis, put the inspectors general in these departments. And nobody, not the President of the United States or anybody else, is going to mistreat those inspectors general, because I don't think the Congress will stand for it. And if they do, it'll be strictly partisan nonsense; and the American people are smart enough to know when partisan nonsense floats around as opposed to the integrity of the governmental processes. So——

Ms. GAFFNEY. Thank you, Mr. Chairman.

Mr. HORN [continuing]. Be secure on that one. That will really ignite this place.

So let me get now to some of the issues all of you have raised. And I must say each of you has had a most helpful series of things that you have talked about. And on this panel, we have Mr. Funk as the Paul Light of this panel, the contrarian. And you have raised some excellent questions, I think.

So let me start with a few of them. One is the idea of how much help you get from the general counsel and to whom should inspectors general turn for legal advice. Do you turn to the departmental counsel? What have those experiences been like? Do you turn to the Department of Justice, which is to represent all of the Government? Let's face it, they do represent the administration in power also. But the career staff over there doesn't necessarily, regardless of administration, and who do you want to go to to seek the proper legal advice?

Why don't you just describe it, Mr. Funk—going right down the line—as to what you think your problem might have been on dealing with a general counsel, or did you have a supportive one? And that is usually a political appointee.

Mr. FUNK. It goes back to the basic issue I cited earlier. The general counsel of the department is the lawyer for the Secretary of that department, which means that there may be a difference of opinion, both perhaps justified, but difference of opinion between the IG and the IG counsel and the general counsel. I opted to always have my own counsel.

When I went into Commerce, the then-existing general counsel made a pitch to the Secretary, Malcolm Baldrige, that he should take over my counsel, who would give me three, four, five lawyers, or as the case may be. I disagreed very strongly. I had a very powerful—

Mr. HORN. Why don't you bring that mic a little closer?

Mr. FUNK. I disagreed quite strongly with that. And I fortunately had a very tough attorney as my counsel and we carried the day. But for the next—for the rest of my tenure, 7 years at Commerce, I had a very difficult situation with the Office of General Counsel, including things as basic as, Does the IG have the right to have somebody take various bugging with a consensual monitoring? And they said I don't have that power to do; that's up to the Department of Justice. I said, nonsense, it is given to me in the law; and I was upheld in that.

When I went to State, a totally different situation, the lawyer, the chief lawyer there told me immediately my first day, he said, "Look, Sherman, I am George Shultz's counsel, you know, and I can't be your guy and also George Shultz's." So there is—there must be a degree of separation. So he never—I never had a problem with that; it worked out well.

Some—

Mr. HORN. What did you do, did you have your own counsel on your staff?

Mr. FUNK. I had my own attorneys, a staff, very gung ho people; one went on to become IG in another agency. Tough people, good

lawyers, a mix of criminal and contract law backgrounds, and they did very well.

And the other advantage is, when I review the work that my Office of Investigations—I have lawyers who are trained prosecutors doing that review, as well, so every report that came out of that office, was, you know, vetted by people who themselves had been prosecutors either in the Federal Government or the State government. I know HHS had a different situation.

Mr. HORN. Let me just go down the line.

On Energy, Mr. Layton, what was your experience?

Mr. LAYTON. I was an IG for almost 14 years in two different agencies. For about 18 months, I was the IG at the Treasury Department before it was statutory, and I did not have a counsel in my own office. And when I went to Energy that was one of the things I insisted on, walking through the door, and used my honeymoon period to acquire the Secretary's agreement that we would have our own counsel. And, frankly, I think it is a factor of personalities, but I personally would not want to be an IG without an attorney who reported to me rather than to the Secretary, and it worked very well for me.

Not to say that the Treasury relationship wasn't effective, but I always had the concern that the attorney was reporting what went on in our counsel—in our meetings to the general counsel. And, in fact, he did, and I didn't think that was a way to do business.

Mr. HORN. So this was an attorney on loan from the general counsel?

Mr. LAYTON. In the Treasury instance it was. In Energy, where I was for 12 years, the counsel reported to me, and I think it was a very good situation.

Mr. HORN. Ms. Hill, what's the situation in Defense?

Ms. HILL. Well, at Defense—when I came to Defense, to be frank with the committee, one of my concerns was that the long standing arrangement at Defense, was based on a memorandum of understanding between the Department's general counsel and the IG—under which the general counsel provides the IG a team of lawyers.

We currently have a deputy general counsel for the IG and about six attorneys under that position. They are provided by the general counsel's office, so they still are rated by the general counsel's office; but under the MOU, there are very specific requirements for independent advice, that their advice can differ from the general counsel's and, that they are not allowed to give all of their information to the general counsel if the IG doesn't want them to. They report to the IG on a daily basis. They are housed in our building as part of our offices and, for all practical purposes, they work for the IG.

I was concerned about that, I must say, when I first got there, probably as a result of two factors. First, the deputy general counsel that we had, she has since left a couple of months ago, and we are filling that position now had been with the IG for about 12 years. And she was excellent and had a very good reputation and knew the role of independence. And I personally had no problem with her opinions and the opinions of my lawyers.

I will caveat this, though, by saying that I recognize I probably have an advantage in that kind of situation, because I am a law-

yer, and I also was a Federal prosecutor. So I am not above questioning my own lawyers sometimes on what the legal basis for their opinions is. So I would probably be more concerned—if I didn't have that background, that I was getting good advice.

I think I am getting good advice now, and I know I am because of my own background. But I do think it is extremely important that there has to be a sound agreement, if you do it by MOU, that they are independent and they report to the IG.

I would also add that in our situation, I do have a very good working relationship with the general counsel of the Department. She and I talk on many occasions. We don't always agree. We have had our differences, but we maintain a good working relationship, and I think she understands our independence.

So the bottom line is, whatever way it is done, the IG has to be able to get their own independent legal advice.

Mr. HORN. That's very helpful.

Ms. Brown, what's the situation over at Health and Human Services?

Ms. BROWN. Well, when I arrived at Health and Human Services about 4 years ago, 4½, the legal counsel function was performed by the counsel of the Department. And I found that difficult to work with, not for technical reasons—for the most part, I felt like I got good advice and so on—but for one thing, as you mentioned, at Defense I did not get to rate the people, or at least my rating wasn't always considered, even though they worked 100 percent of their time in my office.

And I felt that was difficult for the people, they would look for other opportunities where they could prove themselves to their leader. Another one was the ceiling, because of the tight resources that the general counsel was experiencing, they diminished the resources devoted to the OIG to less than half of what they had had. We have, still, monetary penalty authority, which requires a lot of legal work, and there just wasn't sufficient staff to do the work, and there was no way I could control that at all.

So I requested and got my own general counsel. We transferred most of the people into my office that were serving in that position before, and then we hired more so that I was able to have the staff that was appropriate for the level of work I expected of them. And that has worked quite well.

I worked both ways in the agencies that I have supervised. And I believe that it is much more appropriate for the counsel to report to the IG but there have been problems in each case. When I served as vice chair, various things occurred where people got different legal opinions and didn't know how to move forward. The MOU's didn't always function as they were supposed to, so it is an area of problems; and fortunately, the IG Act gives us the authority to have our own general counsel, and I would always exercise that authority at this point.

Mr. HORN. On the cutbacks, were those freezes the result of Presidential or congressional action or both?

Ms. BROWN. The cutbacks were actually to the appropriation and the distribution within the agency, but HHS was hit with some very serious cutbacks. We, in turn, were getting more resources through HIPAA and I wasn't able—

Mr. HORN. "HIPAA," translate that for me.

Ms. BROWN. The Health Insurance Portability and Accountability Act.

Mr. HORN. OK. So you got resources out of that legislation?

Ms. BROWN. Yes, we got resources where money comes out of the trust fund and the recoveries that we are able to obtain which go back into the trust fund. So we put about \$1 billion of Medicare money back into the trust fund that has been paid in 1997. So I think it is only appropriate that some of the money from the trust fund is able to finance obtaining this kind of payback. But without legal assistance, I wasn't able to work in a reasonable manner.

So I was able to staff up from 14 to 60 people in that function, and I think that's a necessity to continue the work that we are doing.

Mr. HORN. OK. Inspector General Gaffney, what about HUD's situation with the general counsel?

Ms. GAFFNEY. Pretty much the same story as June's. When I went to the HUD IG there was a group of attorneys in the general counsel's office who were providing legal services to the OIG. I didn't think that was a good idea for the same kind of reasons. They were situated in the general counsel's office, and they were either telling the Office of General Counsel everything we were doing, which they weren't supposed to do; or they weren't telling the Office of General Counsel what they were doing, in which case, how could the Office of General Counsel rate them?

So, it seemed to me not to be a viable situation. The right way to do it in any sizable IG is, you should have your own office of counsel; I think it is necessary for independence. So that's what we did, and the role of counsel in the OIG when we had—have our own has since become much expanded, much more vigorous, much more an integral part of our operations. I think it should be required, to tell you the truth.

Mr. HORN. OK. So as I understand it, the general feeling of the inspectors general is that you should have your own counsel, right? And you should be able to pass judgment on them. You would rather appoint them, I would think, than borrow them from the general counsel's office.

Is there a problem about how much you know about the basic law related to that agency that is important, maybe in State it might be more important, than just getting a lawyer off the street?

Ms. GAFFNEY. Probably.

Mr. LAYTON. Could I speak to that?

Mr. HORN. Yes, please.

Mr. LAYTON. I don't think most of us expect the attorney adviser to the IG to interpret the agency program laws; we turn to the agency general counsel and ask them how their program operates, what the laws are that affect it. We are using our counsels, for the most part, to guide us in the execution of subpoenas, the relationships with Congress, conducting ourselves in a manner that is above reproach and that implements the laws as we are supposed to, interpreting the IG Act for us.

I don't think—there may be some exceptions where the attorneys have a programmatic function. But generally we are not asking our attorneys to interpret the agency rules and regulations.

Ms. GAFFNEY. We do.

Mr. HORN. Yeah. Let me move off this.

I know we are going to spend a lot of time on some of these things, but the bonus situation is made by the agency personnel; is that not correct?

Ms. GAFFNEY. Yes.

Mr. HORN. So if you have some of your people receive a bonus, in a sense, is that a conflict of interest for the agency to soften up the IG's office? How do you feel?

Ms. GAFFNEY. We, the IG's, give bonuses to IG people. But the only person who can give a bonus to an IG is the Secretary. And I think all of us have withdrawn ourselves from consideration for that; isn't that right?

Mr. LAYTON. That was correct in my case.

Ms. GAFFNEY. All of us here.

Mr. HORN. OK. So you think that's not a problem for the IG's and you have the authority to give bonuses to your own personnel?

Ms. GAFFNEY. It is a problem if an IG is taking a bonus from the Secretary, absolutely.

Mr. HORN. Yes, I agree with that. But I guess I would ask you, should we be giving bonuses at all?

Mr. FUNK. To an IG?

Mr. HORN. No, to any of your staff.

Mr. LAYTON. Why not? I would say it seems perfectly logical.

Mr. HORN. Here's my attitude on bonuses, as my own staff knows it: If you are good, you should get a salary increase. Why a one-shot bonus?

Mr. LAYTON. The law provides that Federal employees are generally eligible to receive bonuses, especially in the Senior Executive Service, and for us to deny those people that opportunity, would chase them to some other vineyard to do their toiling rather than in ours. In fact, that's one of the reasons that inspectors general earn less than their staffs. Their staffs are getting bonuses, the IG's are not.

Some IG's would never be eligible for bonuses, because they were not previously Senior Executive Service employees. Those IG's who have entered the IG position from outside or from below the SES level would under no circumstances currently qualify or be eligible to receive bonus consideration by anybody. But there is a small group of which—I guess three of us at the table represented those folks from time to time. We were SES before we became IG's, and we were not eligible—we withdrew from consideration for bonuses.

My case, I think it was like in 1991 or 1992, I wrote a letter to the Secretary and said, I don't want to be considered anymore. There is a concern in the community that my receiving a bonus is an independence issue, and I want to avoid that appearance.

Mr. HORN. Let me move to another question, and that's the proximity of the IG's offices to the basic agency headquarters. Were most of you during your various assignments housed in the same building as the headquarters of the agency you are in—where you are an IG?

Mr. FUNK. When I moved to State they offered me very sumptuous quarters in Rosslyn, and I mean sumptuous. And I was tempted for all of about 30 seconds, but I realized it would be folly,

so my staff eventually moved almost entirely over to Virginia, and we stayed in Foggy Bottom.

Mr. HORN. How many people were with you personally?

Mr. FUNK. About 20, no more than that. We rigged up a system; it was all right. But it was a conscious decision on the part of the State people to get me out of there, and I thought that was not to be—

Mr. HORN. Mr. Layton, what's your experience on proximity to agency offices?

Mr. LAYTON. I always had an office that was within close proximity to the Secretary's office. I rubbed elbows daily with assistant secretaries, but I never had them to my house for dinner, nor was I to their houses for dinner.

Mr. HORN. Maybe you are not as good a cook as Mr. Funk. He might be the gourmet cook of the IG's here.

Ms. Hill, what's been your situation?

Ms. HILL. At Defense, Mr. Chairman, we are housed in an office—well, actually, we have most of our people in one office building; and we have some overflow, from audit, in another office building right down the street. But the main building literally overlooks the Pentagon. We are on Army-Navy Drive. So if you look out my window, you see the Pentagon.

I am over at the Pentagon on and off throughout the week for meetings, et cetera. Although we are not actually housed in it, we are very close. And I, for one, prefer being across the street in a fairly modern building as opposed to the renovation of the Pentagon that's going on.

Mr. HORN. So you don't feel it has harmed your operation to not be within the Pentagon?

Ms. HILL. No, because we have a large operation and it keeps our people together, we have them organized.

In addition, I should say we have field offices around the country for DCIS, so obviously they are not in this area. But I think we are certainly close enough to the Pentagon where we are over there in a few minutes' time. We are back and forth with meetings. Pentagon people come to our offices for meetings. Other than physically being in the building, I think it works out much the same.

Mr. HORN. Ms. Brown, what's your experience?

Ms. BROWN. Well, in two of my IG jobs, NASA and Department of—DOI—Interior, I was in the same building. And at Defense, again I was across the street. Now I did have a small office in the Pentagon, so that if I were over there for meetings, I would have a private place for phone calls and so on. And I was given the choice, since the office had just been moved there, as to whether I wanted my office in one or the other, my main office.

I chose to be with my people because I thought that daily contact was much more important. And now at HHS, I am in the building across the street, and there is a tunnel between the two buildings. So it really is immaterial to me.

Mr. HORN. Which one, is that the Humphrey?

Ms. BROWN. The Cohen. So we go back and forth numerous times during the day for various meetings, and I wouldn't want the disruption of moving. I think it works quite well and that there is no problem with being in a separate building.

Mr. HORN. Ms. Gaffney.

Ms. GAFFNEY. We are in the same building as the HUD Secretary. And I actually like that, because it is a way to pick up intelligence.

Mr. HORN. Absolutely.

Ms. GAFFNEY. You eat in the cafeteria. You go up and down the same elevators, so I think it is a good idea.

Mr. FUNK. There is another aspect of it, if I may, Mr. Chairman, that is for the smaller IG's, the so-called designated entities. If you are head of an office of maybe 20 people and you are right smack—right around the corner from the office of the head of the agency, it becomes a slightly different thing. In theory there should be no difference, but in point of practicality, if you are in an office of 20 people and you have an agency head right around the corner from you, it makes it a bit dicey, and it requires a particularly tough individual to be able to meet on a daily and frequent basis with the head of the agency and still not be a little bit intimidated.

Mr. HORN. That's a good point, too.

Let me move to the law enforcement authority issue. A number of you brought that up. What's been the discussion within the inspectors general community on your desire to get the same privileges that, say, the FBI has, the Secret Service; we face the same problem with Immigration and Customs.

Do you think there is a pretty strong plea you can make on that situation and have you in the past?

Ms. BROWN. If I could answer that, when I was vice chair, we worked very hard with the Department of Justice to have them sponsor our legislation, should it be that, to get full law enforcement authority; and at that time, they agreed to give blanket authority to almost all of the IG's. And we, of course, followed the same prescribed training and regular recertification that the FBI or any other law enforcement organization would do.

We accepted that blanket authority, and there was to be an understanding that if there were no problems within 2 years, that Department of Justice would assist us in getting a legislative change to grant law enforcement authority to all of the IG's with 1,811 criminal investigators. Unfortunately, the Deputy left the Department of Justice, and so we are—our 2 years have passed. There certainly have been no incidents during that time, or any previous time, in any IG office where they didn't exercise this in the most—to the highest standards. But we are still struggling to get law enforcement authority for the people on our staff.

Mr. HORN. Would that be just certain people on your staff?

Ms. BROWN. Yes.

Mr. HORN. And if so, how would you define the split?

Ms. BROWN. It would be 1,811 criminal investigators who have done their quarterly certification and meet all the requirements. Should they temporarily be disabled or something, where they couldn't meet those requirements, they wouldn't have that authority during that time. So it would be very strictly monitored, which we do anyway.

The problem with the deputization is, it is a very paper-intensive exercise. I had, before we got the blanket, two people working full-time just keeping track of all the deputizations; and any one inves-

tigator might have 20 investigations. He may be carrying 8 or 15 different deputizations, not knowing which job he would be working on on any given day.

And right now we have the deputization for all health care cases and for parents who are delinquent in child support. But we may work on a different program for the day, and that law enforcement agent can exercise his authority during that period of time. So it still causes a great deal of confusion and administrative burden to operate the way we are operating.

Ms. HILL. Mr. Chairman, I should add, it is a very important authority and last year we did receive statutory law enforcement at DCIS for our criminal investigators in the IG's office at Defense. There was a slightly different situation than the other IG's in that DCIS had had a deputization agreement with Justice for something like 8 or 9 years. So there was a long track record; the proposal went over as part of the department's proposal, OMB endorsed it, the Justice Department and the FBI endorsed it, and we did get that authority last year.

Mr. HORN. Now, was that authority within the executive branch or was that congressionally put in statute?

Ms. HILL. It was enacted in statute. It was in the defense authorization bill last year, and it is now in statute. So DCIS does have that authority statutorily as of last year.

Mr. HORN. So you got it from your authorization committee?

Ms. HILL. Right.

Mr. FUNK. Mr. Chairman, if it wasn't so physically dangerous at times, it is almost an Alice in Wonderland situation. We have IG investigators who are pursuing a case, and at the last minute, they are leading up to an arrest, and suddenly, since we don't have arrest powers, we have to bring in another law enforcement officer with arrest powers to join our people. Sometimes, difficulties come up and they get called to another urgent matter, and we are trying to get a local cop or something, or overseas find somebody with arrest power. It is very, very difficult and a serious situation.

Mr. HORN. Sure.

Do you have anything you want to add, Ms. Gaffney?

Ms. GAFFNEY. Yes, I would like to say that the FBI and the Department of Justice have actually been very helpful to us in coming up with this blanket MOU. It has overcome an enormous number of problems that we had when we worked on a case-specific basis.

The second point is, it has never been clear to me whether there is a consensus among the IG's on the need for a law enforcement authority, because our missions, in fact, differ quite a lot.

One of the things we are doing in the HUD OIG is, we are participating in violent crime law enforcement task forces in public and assisted housing. That's where the drugs are, that's where the gangs are, that's where the guns are. So this is as dangerous work as is possible.

The Congress has funded us for that work, and yet it is based on an authority that is administrative and can be pulled away from us at any time.

Mr. HORN. Explain that to me. I don't quite understand it.

Ms. GAFFNEY. This blanket MOU that we have with the Department of Justice, they could end it tomorrow.

Mr. HORN. In other words, they deputize your people now; is that it?

Ms. GAFFNEY. Right, it's renewed every 2 years. But if they didn't like me or my performance, they could end it tomorrow. It's an administrative act as opposed to a congressional act giving you the authority.

Mr. HORN. Have you sought that authority from the Banking and Urban Development Committee?

Ms. GAFFNEY. I have followed Eleanor's advice, and I have been discussing this with the FBI and the Department of Justice. Because the history is, if you don't have their support going into this, you won't get a bill coming out. So that's where I am.

Mr. HORN. OK. Well, that's a good question for us to discuss and talk to the relevant committees about.

OK, let me ask just a few other things here on what would you, as professionals in this area, regard as the appropriate measurement of performance for inspectors general? Is it the money delivered or what? What's the standard for measuring IG performance?

Ms. GAFFNEY. John Layton is right, the measure should be positive change. My problem is, I don't know how to measure positive change.

Mr. HORN. In other words, prevention, if you can prove that you made a preventive difference?

Mr. LAYTON. I would like to offer a couple suggestions.

Mr. HORN. Sure.

Mr. LAYTON. One, we spent a considerable amount of time in the President's Council on Integrity and Efficiency arriving at some model performance measures, they include both process measures, which I view as the number of arrests made, the number of convictions, the number of dollars recovered, and the number of funds recommended for better use. They are process kinds of measures.

We also recommended two or three or four outcome type measures, and in each category we had some examples of outcomes. And that is how you cause positive change in programs.

I don't like to use the word "prevention" because I think that has some kind of a therapeutic sound to it. I think we are trying to accomplish better delivery of services and goods to citizens. In order to do that, we make observations and recommendations that the agency administrators are responsible for implementing, or the Congress for enacting legislation if they chose to. And it is in those areas that we have difficulty in coming up with measures. What part did we contribute to the final corrective action and what part did the agency contribute? And often the IG is reluctantly viewed as making a positive contribution.

I think that a dialog with the Congress—I am a strong believer in the strategic plan concept. I think a dialog with the Congress over what it is that the IG's are trying to accomplish—what have they done, what is their strategy for causing positive change and identifying deliverables that you as the IG intend to deliver, and did you deliver those and what did they accomplish? I think that would focus more attention on the positive side of things that IG's do.

Mr. HORN. I think you are absolutely correct.

Let's take the situation, did you meet with the authorizing committee at all when your agency met with them on the strategic plan?

Mr. LAYTON. No, sir.

Mr. HORN. So you weren't included in the staff meeting?

Mr. LAYTON. No, sir. I met with the oversight committee. I had an extremely close relationship with the oversight committees, but not with the authorizing committees.

Mr. HORN. How about the appropriations subcommittee?

Mr. LAYTON. We met with the appropriations subcommittee.

Mr. HORN. Oh, you did.

Mr. LAYTON. Spent considerable time with them.

Mr. FUNK. Mr. Chairman, way back in time in the early 1980's, I chaired what was called the Performance Evaluation Committee of the PCIE, and we tried desperately to come up with some kind of measures of performance that would hold up and that would be fair and valid. We ran into the problem that John has cited.

For example, if we were to define a quality of service, something done by the IG personally, and it might turn out that one of the program assistant secretaries said, Well, heck, my people did as much as you guys in that. If I were to take unilateral credit for that, we would end up causing more trouble than it was worth. And we threw in the towel—after about a year's work, we threw in the towel.

We found that it was impossible to come up with other than the usual things, which are all process. Process is very easy to measure, but to get it to the quality of the subjective judgments of whether this was something which was initiated by this individual or that individual, became a matter of splitting how many angels on the head of a pin.

Mr. HORN. Yes. Any comments on this?

Ms. Gaffney.

Ms. GAFFNEY. It always seems to me in areas like ours, or research or whatever, that you almost inevitably have to go to client surveys. The problem is, of course, we don't necessarily trust our clients to be honest.

Mr. HORN. You might have to send some to Federal prison, you mean, to answer the survey.

Ms. GAFFNEY. That's what I mean.

Mr. HORN. I can understand the problem.

Let's talk about the budget recommendations. When you are trying to submit your budget through either the departmental process—I assume it becomes part of the Secretary's budget—have the IG's been cut in their requests for resources, and is that cut more by the agency secretaries and are they cutting some of their own programmatic departments? What's your experience?

Mr. LAYTON. I can probably speak to that, especially being a former IG. The—IG grew at times in certain—with certain secretaries; at other times, I took reductions. I continued to play in the departmental process of building a budget, and I watched to see if I was generally treated the same as the rest of the department. If I was, I didn't squawk too loud.

I played the usual budgetary games and tried to get my budget increased by going to whomever would listen. But I generally got

what the rest of the department got as far as reductions and growth. And I never felt that we were discriminated against because we were the IG's office. Maybe we weren't helped because we were the IG's office, but we were never treated adversely, in my opinion.

Mr. HORN. Any other experiences?

Ms. BROWN. Well, our Secretary has been very supportive of the IG Office, and—particularly with the alternative source of funding, which would be the trust fund, when she could see the amounts being returned were so great; she personally visited various congressional people and OMB to get the concept accepted that was later adopted in the Health Care Portability Act.

That is about—well, this year, \$85 million of our budget. We also compete with resources for those things outside of the Health Care Financing Administration for the rest of our budget. That has diminished; it was about \$32 million this last year, and it has diminished, but in proportion with other parts of the Department, we have been cut. And so there are some hardships there, because there are many other programs in the Department that need to have oversight.

Mr. HORN. Well, since you brought it up, let me ask you a specific question about the health care situation. You are beginning to measure the Health Care Financing Administration, as I understand it, their overpayments based on statistical samples; is that correct?

Ms. BROWN. Yes.

Mr. HORN. This appears to address to some degree Dr. Light's point about the need to measure performance in terms of reducing the fraud and waste. How difficult is this information to collect?

Ms. BROWN. Well, it is a tremendous work load. You have to go and sample people in all different parts of the country. We have many contractors who are actually making the Medicare payments, and we sample various contractors and then various quarters of their work to come up with a fee for service, a statistical sample that would be valid to know how many payments should not have been made, and we found the midpoint last year—not the report that we are working on now, but in the previous year, was about 14 percent or \$3.2 billion. So it was very useful information because I don't think anybody ever had a handle on what kind of overpayments were made. Now, those weren't all fraud. Those were other things mixed in there.

Mr. HORN. Did your statistical program—I know some insurance companies do this, and maybe you chatted with them in developing it, I would hope so—take into account that if you are in for a certain type of operation, these are the likely things that should be billed in relation to that. Did that type of test, was that applied by your office?

Ms. BROWN. We actually had medical people that went back to the medical records that were supposed to support the service and where there was a medical record and where a service was an eligible service, whether it should have been performed based on the patient's condition. Those were the kinds of things that they researched. So it was a very labor-intensive review, just getting all of that information.

We did talk to others in the industries. We have a statistician—well, several of them with doctorates in this area on our staff, and we worked with the University of Texas with their statisticians to give us extra assurance that the kind of sampling we are doing was well accepted within the profession, because it is never been done before or anything on that scale.

Mr. HORN. OMB, well, let me—

Mr. FUNK. A bit on the budget if I may, Mr. Chairman, very briefly.

Mr. HORN. Yes, please.

Mr. FUNK. The independence issue comes very much to the fore here. I had an inspection done of the Office of Administration in the Commerce Department. It was a scathing report. And the Assistant Secretary for Administration prepared the budgets for the Department; at that time, still, the IG's budget was included. My budget request was cut severely that year before it went to the OMB. Much of it was restored at OMB, but it was still cut heavily.

Your committee, the Government Operations Committee, the full committee, asked the GAO to look into that, and GAO issued a report on this incident. And as a result of the report, the language—there was a direction made that OIG budgets must go to the deputy secretary level directly rather than through the administrative channel. So these things can be very, very, very difficult sometimes.

Mr. HORN. I was going to ask some questions on that, has OMB cut agency recommendations to increase resources for the IG? How supportive has OMB been?

Ms. GAFFNEY. Can I tell you what our experience has been over the last years? It is the same pattern: whatever we request from the agency head, he submits it to OMB, because he doesn't want to be seen as downsizing the OIG. OMB then cuts it. Then it goes to the Congress and they put the money back.

Mr. HORN. Now, is that true of other inspectors general, that the OMB has cut your agency request?

Ms. HILL. Mr. Chairman, I should say at Defense, our experience has not been with the—the problem has been in the Department, and I should say it is not necessarily discriminatory. Before I got there, this goes back 3½ years, there was no IG at DOD for some time. There was a very strong deputy who had been there a long time, and the history of the IG had been to get budget increases.

About 6 months before I got there, he basically agreed with the Department to put the IG shop on a downsizing, program, of about 31 percent from that year, which would have been 1995, to 2001. Since then, we have been hit with an additional 6 percent cut as part of the QDR cuts for defense agencies which did not single us out. Nevertheless, on top of the initial 31 percent, we are right now downsizing by 37 percent, which has caused us to reorganize twice to eliminate our inspections unit and some other things. And all I can say is, it is getting very, very difficult for us to perform our function adequately under those kinds of downsizing requirements.

Mr. HORN. Yes. Any other experiences?

Ms. BROWN. I don't recall an instance where OMB actually cut us further than the Department had.

Mr. LAYTON. The Office of Management and Budget has helped me on more than one occasion with my budget.

Mr. HORN. Let me get back to the HCFA situation now. How can that information improve oversight by the agency head in the case of the Health Care Financing Administration? Has the data been made available at this point and what conclusions has the agency drawn from that situation?

Ms. BROWN. This is in our financial statement reviews?

Mr. HORN. This is about your statistical reviews.

Ms. BROWN. Which is part of the financial statement review, sir.

Mr. HORN. OK.

Ms. BROWN. Actually, I was one of those CPA's who really wondered whether financial statements in Government were going to be that helpful, because I could see a lot of differences between that and industry where they may not be useful at least in the same way.

I was very pleasantly surprised by the fact that we now had very broad, accurate information that the Department took very seriously and met on a regular basis as we were able to get close to the conclusions and developed corrective action programs that they put into place. I don't think we will see a lot of immediate results because, of course, the next statement is almost three-fourths of the time is passed by the time the statement for the previous year comes out. And they can benefit from that. So they only have one quarter where any corrective action will really be reflected in the following statement.

But certainly a lot of actions have been taken. The Department has taken it very seriously and is putting additional resources on various reconciliation efforts that have been put aside, because they didn't have the resources. A lot of these system upgrades are taking place as a result of the financial statement review, additional audits that are done by the HCFA, and also screenings, to see the people who aren't legitimate businesses don't get into the program in the first place, because this was discovered as part of the problem as well.

Many, many actions are under way. So I think that there is going to be a very, very positive effect because of the financial statement review. And there is a lot of anticipation on the next one with everybody wanting the results and seeing as early as possible what's effective and what isn't, so that they can modify their actions accordingly.

Mr. HORN. Have you seen any move at this point to modify their review of these claims so there would be less fraud and waste?

Ms. BROWN. I have seen quite a bit of action on people that aren't legitimate businesses getting into the program. The Department has taken a lot of actions and is putting regulations into effect to change that.

Some of the other things: They've rearranged funding where they are pledging more people to do these audits that are done by medical people of the medical records of folks. As I say, that's very labor intensive. And it isn't a huge effort, but they are devoting some resources to it. And so we will have to wait and see if that is enough to deter people from submitting billings when they haven't actually performed a service or needed service, or ineligible service.

Mr. HORN. So they are going to reorganize the way they approach the review of the bills on the decentralized basis I take it?

Ms. BROWN. That's in process, yes, but it is such a huge program.

Mr. HORN. I know it is unbelievable.

Ms. BROWN. We are talking about 800 million claims that were sampled in order to get that result. So considering the cost of this type of review, we are looking at other alternatives. But they are working closely with us, and we meet on a regular basis to consider all different corrective action programs, and I think some of them are going to be quite effective.

Mr. HORN. Now, are some of these going to be a regional pilot or can they do everything at once?

Ms. BROWN. I think some will probably be a regional pilot.

And another thing, they are implementing some of these things gradually. For instance, the—having people have a bond in order to become a durable medical equipment supplier or something, they are starting out with a very small proposal of bond and one that I don't think would deter a large organization from—or ensure that the Government got their money back should there be some action that was inappropriate.

Mr. HORN. Do they need legislation on that?

Ms. BROWN. They will be seeking regulatory action on that. I think they already have the legislation.

Mr. HORN. They have the legislation so they just got to issue the regulations and go through the normal process.

Ms. BROWN. Um-hmm, that's right.

Mr. HORN. The last couple of questions here. I am interested in the training for your employees. Have you had sufficient funds so you can keep them up to speed? And what kind of sharing is there among all the different inspectors general in terms of some agreement as to the basic type of curriculum that's needed; or are these all unique types of training related to a particular agency's financial access?

Ms. HILL. Mr. Chairman, I mention in the statement mean that the IG community has set up the IG Academy at FLETC for the criminal investigators and the IG auditor training institute for our auditors. So they have come together really to set up a unified basic training for investigators and auditors.

In addition, there are a lot of professional development seminars in the IG community, you know, that we continue to do, through the PCIE, and also take advantage of other training that is available outside what the IG community offers.

Ms. BROWN. We, of course, participate in that. We also have a great deal of training in—specifically in health care. The Department of Justice, the FBI, and my office participates in that. We invite other IG offices that have health care responsibilities, also State and local government people, because of the Medicaid issues; and experienced people from Justice and the FBI and my office would train new people, including their new prosecutors and others, in the best way to work these cases. So that's been one specifically geared toward the mission of the agency. But it is broadly used by all people who have any issues that would relate to that.

Mr. HORN. Since you have mentioned Medicaid, your \$23 billion figure that we got out of the consolidated financial statement as waste, fraud, and abuse, was that figure strictly tied to Medicare?

Ms. BROWN. That's right.

Mr. HORN. Did you have a separate statistical analysis on Medicaid?

Ms. BROWN. Not on exactly the same thing. And we are working with the States on Medicaid, so we have included them in our audit, but it is done differently. And, of course, each State runs a different program. What we have done is formed partnerships with audit organizations within the State. One thing that I said and pledged to the State people from the start is, we are not going to worry about who gets credit here. We will help you with any of these audits. We will provide audit programs and that work successfully in Medicare. We will give you either supervisory people or entry-level people, whatever you need to supplement your staff and to assist you in doing these audits. And, of course, both the State and the Federal Government make recoveries.

I think we have over 30 such programs going on right now. And there have been a great number—the States have been very, very happy with that because they made dollar recoveries, and I think that it has been beneficial to both the State and Federal Governments.

Mr. HORN. Yes. I completely agree with you. Have any States turned you down on this offer?

Ms. BROWN. Some haven't gotten to it yet, but we have now gone over the halfway mark; and it has been discussed at some of the audit conferences where the State auditors assemble. And so there is more and more. Once they do an audit, too, they look for other areas that they can partner with us, so some of them are doing it in four to five different areas now.

Mr. HORN. The last substantive question is on the peer review process. How do you feel about that? Is there another way to look at it? Should GAO participate in those peer reviews as an outside force? Should there be people from private sector involved?

Mr. FUNK. My staff hasn't forgiven me yet because I volunteered my shop as the guinea pig for the GAO peer review. It is called quality assessment review, but essentially it is the peer review. It was done back in 1983, I believe. It was enormously helpful to us. It took over a year. It was the first one, and they were going very carefully. It took about a year, and subsequent GAO reviews ran about 6 to 8 months. It is a long, long process to do a comprehensive review.

The peer reviews that are done now, unless they've changed since I left, the peer review now is strictly on the audit side—no inspections, no investigations, no administration; all you get is a review of the audit function. That's helpful, but it is nowhere near as helpful as the GAO reviews which covered the entire shop. They were prodigiously expensive and resource intensive, so GAO dropped them, and to my knowledge, they will need somebody giving them a swift kick from the Hill before they get started again, because it is extremely labor intensive.

Mr. LAYTON. I think I would disagree with Mr. Funk.

Ms. GAFFNEY. Can I first agree with Mr. Funk? I think these peer reviews have become nothing. They are looking pretty strictly at compliance with audit standards. There is a real conflict of interest; it is an ungentlemanly thing to do, to criticize another IG office. And I think if you looked at those reports, you would find they are mostly very good news. I think this community is really at risk if we don't come up with some decent answer about who watches the IG, because there is like a momentum growing, you know.

Mr. HORN. When everybody is watching, nobody is watching, right?

Ms. GAFFNEY. Right.

Ms. BROWN. Could I add, the peer reviews that are done now are part of the requirements of the GAO standards which adopted those from the AICPA standards. And we, in fact, found some substandard work that CPA's were doing for the Government some years back and worked with the AICPA to see they did peer reviews.

There were some—it turned out there was nothing they could get people on if they didn't have work papers or some other real violation of the standards that CPA's should be adopting. So they started peer reviews and they put it into their requirements. Then, of course, GAO adopted them, and they go for all audit organizations.

I think they serve a purpose. I served as a military IG for 4 years, as well as these other IG positions, and it was very much like that, that the real effort was put in by knowing that there was going to be one of these reviews making sure all of your standards, your, you know, standards of operation, everything was up to date and in top condition. You really didn't expect to find a problem after the people got there, but there were usually suggestions and other recommendations.

It isn't for the whole office, but I think it is worthwhile. I don't want to have anybody think that's anything like the kind of comprehensive review. It would be considered inadequate if you thought that. But it is a good way of maintaining the standards and being sure that the audit requirements are being met in any agency on a regular basis. They are required every 3 years.

Mr. HORN. OK.

Ms. HILL. I would just add to that. We participate in the audit peer review process, and I do think, as June says, that it does help focus people on the audit standards. It also ensures or helps ensure that you have your own quality assurance controls in place in the audit part of your organization.

Our office, in addition to the audit side, we have in our criminal investigations unit, which is a substantially, rather large organization, we have established our own internal inspection unit which follows very much the types of things both the FBI and DEA have. They have their own internal inspections unit, because obviously, in criminal investigations, there is an issue with bringing outsiders in to do that kind of work because you have got very sensitive ongoing criminal investigative files.

So we have set up a team, a unit, that does nothing but regular inspections of our field offices of our criminal investigators. And I

think that has worked very well, frankly. So we feel that we have at least the operative parts of our offices covered in those ways.

Mr. HORN. Mr. Layton?

Mr. LAYTON. I think the peer review process looks at the tradecraft issues and does a reasonably good job at identifying failure to comply with appropriate tradecraft. I think when you start looking for other groups to conduct reviews that are not tradecraft oriented, as the investigators reviews are, you begin to create an expectation of what the IG should be focused on, where should the resources be spent. And that's why the IG was confirmed by the Senate to make those judgment calls.

And I don't think that outside groups should be making those calls. If the Congress isn't happy with our performance, or the President, they can take a corrective action.

Mr. HORN. Ms. Gaffney? Get that mic close.

Ms. GAFFNEY. There are different levels of problems here. The PCIE set up a mechanism to deal with allegations of wrongdoing. But what remains unanswered is, What about an allegation that Susan Gaffney is a racist? That is not wrongdoing in the sense that the PCIE community is going to look at that. So who is going to look at that?

And there are a lot of these charges. So—I mean—I mean, I don't think you can hold a hearing every time one of these comes up. So there is a need for some kind of other mechanism.

Mr. HORN. It depends on your previous life experiences how you react, Ms. Gaffney.

Ms. GAFFNEY. I guess so.

Mr. HORN. I was a university president. There is nothing anybody can do to me that hasn't already been done to me. I have had some of these things said about me, and I just ignore it. And I don't waste time and I consider the source. And as my Irish mother said, this too shall pass. So don't worry about this stuff.

Ms. GAFFNEY. OK.

Mr. HORN. I think, you know, the public knows what's right and what's wrong.

One final question, open-ended question, is, is there anything you would like to suggest that we haven't discussed? We are going to follow-up, I might say, with staff on both sides sending you some more detailed letters we haven't had time to cover, and questions. But is there anything that we haven't covered in our general discussion here that would make the IG's role more effective?

Mr. LAYTON. I would like to have an opportunity to speak on the subject of law enforcement authority. I did not do so earlier.

I don't think it is generally understood by the Congress or many people in the administration the role of a criminal investigator. Investigating a fraud in our agencies involves interviewing people, reviewing records, executing search warrants, making arrests, and presenting cases before juries. The process of executing search warrants and making arrests requires full law enforcement authority. You have to have the authority to carry a weapon and make arrests to execute search warrants.

Without law enforcement authority in the IG community, which we currently get through the MOU or they currently get through the MOU, you are only half of an investigator, and that is a fun-

damental deficiency if left uncorrected. I think the MOU has resolved it on a temporary basis, but it is, a constantly held-over-one's-head opportunity. It is an opportunity while it exists, but it could go away at any time.

Mr. HORN. That's very helpful.

Any general thing that we have not covered? Any thoughts?

Mr. FUNK. Very briefly.

Mr. HORN. Yes.

Mr. FUNK. Very briefly, all day long you have been talking about deficiencies, or possible deficiencies in the act, things to be done to correct that. During the past few years, I have been working with a number of foreign governments, trying to assist them in anticorruption efforts. And let me tell you something, they would give their right arm and left arm to have even a fraction of what we have in the IG Act, let alone—not even counting the resources involved. They simply do not have legislation like this, except in a few places beginning to come.

So I think that it was mentioned by all of us; I think we have a deep feeling of thanks and gratitude for the IG Act.

Mr. HORN. I am thinking of that play called "The Inspector General." And I am wondering if Russia, with its current difficulties, has any inspector generals. Are you a consultant over there?

Mr. FUNK. They have an inspection system that was set up, headquartered in the Office of the President in Moscow. When I was there, at the end of the first discussion, somebody raised his hand, asking a question through an interpreter, and he asked, "What do you do about reprisal, Mr. Funk?" I thought he was talking about personnel reprisal. So I explained the weak arrangement that we have here, and it is not very good but it is something to protect people against reprisal. And whereupon the hand went up again, and he said, "No, no, no I am not talking about that, I am talking about being killed." And sure enough, 3, 4 months ago, an inspector was killed after issuing a draft report which angers people. So you see they have a long way to go.

Mr. HORN. Right, a tragic situation. Well, I want to thank all of you for your really excellent presentations and writing, as well as the dialog we've had here. And since I said, the staff on both sides will coordinate, through Staff Director George, the questions to you, and we will put those in the record at this point.

We will also put in—at Senator Glenn's request, he'd like to ask he be allowed to submit testimony for the hearing record, and that will go right after Ms.—Senator Collins' remarks this morning.

And now I would like to thank the staff that prepared this hearing: J. Russell George, staff director and chief counsel—there he is, over by the door with my chief of staff, Mr. Bartel; John Hynes, professional staff member, Randy Kaplan, gentleman to the right—to my left, your right—did an outstanding job with this hearing as counsel; Matthew Ebert, the clerk; Mason Alinger, staff assistant; Carolyn Hicks, professional staff member for the full committee majority. Do you want to put your hand up so we can all see you?

And then on the other side, we have Mark Stephenson, professional staff member for the minority. We have Jean Gosa, down there by the telephones as a clerk for the minority; and the court reporters are Cindy Sebo and Bill Odom.

And we thank you all. And with that, we are in recess. There will be a further subcommittee meeting with two subcommittees of the House Committee on Commerce this Friday on the review of the Health Care Financing Administration, as a matter of fact. We are adjourned.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned, to reconvene on Friday, April 24, 1998.]

[Additional information submitted for the hearing record follows:]

CRS Report for Congress

Statutory Offices of Inspector General: A 20th Anniversary Review

April 27, 1998

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Statutory Offices of Inspector General: A 20th Anniversary Review

Summary

1998 marks the 20th anniversary of the Inspector General Act of 1978, the basic authority governing statutory offices of inspector general (OIGs), and the 10th anniversary of the Inspector General Act Amendments of 1988, which added to their reporting requirements and extended such offices to an additional set of government organizations. Statutory OIGs now exist in nearly 60 federal establishments and entities, including all cabinet departments and the largest federal agencies as well as many smaller boards, commissions, corporations, and foundations. (These are covered in a companion CRS Report 98-379 GOV, updated as events require.)

The President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), operating under the auspices of the Office of Management and Budget, provide coordinating mechanisms, respectively, for the inspectors general (IGs) in the larger establishments, who are appointed by the President and confirmed by the Senate, and for IGs in the smaller designated federal entities, who are appointed by the agency head. In addition, a special integrity committee, under the control of the PCIE and ECIE, may be established to investigate allegations of wrongdoing by IGs or their senior staff.

Offices of inspector general consolidate responsibility for auditing and investigations within a federal department, agency, or other organization. Established by law as permanent, independent, nonpartisan, and objective units, OIGs are designed to combat waste, fraud, and abuse. To accomplish this broad mandate, IGs have been granted a substantial amount of independence and authority. Inspectors general are authorized to: conduct audits and investigations of agency programs; have direct access to agency records and materials; issue subpoenas for all necessary information, data, reports, and other documentary evidence; hire their own staff; and request assistance from other federal, state, and local government agencies directly. Except under rare circumstances, spelled out in the law, an agency head provides only "general supervision" over the IG and may not interfere with any of his or her audits, investigations, or issuances of subpoenas.

Inspectors general, moreover, report semiannually to the agency head and Congress regarding their findings, conclusions, and recommendations for corrective action and may issue immediate reports on particularly serious or flagrant problems they discover. Indeed, IGs are required to keep the agency head and Congress fully and currently informed about problems and deficiencies relating to the administration of programs in their agency through these reports and other mechanisms, including in-person meetings and testimony at hearings.

Despite their 20-year evolution and substantial statutory revisions in 1988, offices of inspector general still face a number of concerns and possibilities for change, some of which are being pursued through oversight and legislative hearings in the 105th Congress. These issues tie into the IGs' institutional arrangements, authority and powers, perceived effectiveness and orientation, reporting requirements, personnel practices, and incentive awards.

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Statutory Offices of Inspector General: A 20th Anniversary Review

Overview of Statutory OIGs

Statutory offices of inspector general (OIGs) consolidate responsibility for auditing and investigations within a federal department, agency, or other organization. Established by law as permanent, independent, nonpartisan, and objective units, the OIGs are designed to combat waste, fraud, and abuse. The initial establishments occurred in the wake of major financial and management scandals, first in the Department of Health, Education, and Welfare (now Health and Human Services) in 1976 and next in the General Services Administration (GSA) in 1978. The latter episode provided a catalyst for an OIG in GSA and in each of 11 other departments and agencies. Reinforcing this, an even earlier scandal involving the Agriculture Department demonstrated the weaknesses in independence, authority, and resources of administratively created offices of inspector general. Statutory offices now exist in nearly 60 federal establishments and entities, including all cabinet departments and the largest federal agencies as well as many smaller boards, commissions, corporations, and foundations.¹

¹ Separate from the offices directly under the Inspector General Act of 1978, as amended, are two others, which, for the most part, have been modeled after the provisions of the basic IG act, as amended: in the Central Intelligence Agency, whose IG is a presidential appointee subject to Senate confirmation (103 Stat. 1711-1715); and in the Government Printing Office, the only legislative branch entity with a statutory IG; in this case, the inspector general is appointed by the head of the agency, the Public Printer (102 Stat. 2530).

For information on the history of OIGs and proposals for change, see: Michael Hendricks, *et al.*, *Inspectors General: A New Force in Evaluation* (San Francisco: Jossey-Bass, 1990); Paul C. Light, "Make the Inspectors General Partners in Reform," *Government Executive*, v. 25, Dec. 1993, and *Monitoring Government: Inspectors General and the Search for Accountability* (Washington: Brookings Institution, 1993); Frederick M. Kaiser, "The Watchers' Watchdog: The CIA Inspector General," *International Journal of Intelligence and Counterintelligence*, v. 3, 1989; Kathryn E. Newcomer, "The Changing Nature of Accountability: The Role of the Inspectors General in Federal Agencies," *Public Administration Review*, v. 58, March/April 1998; U.S. Congress, House Committee on Government Operations, *The Inspector General Act of 1978: A 10-Year Review*, H.Rept. 100-1027, 100th Cong., 2nd sess. (Washington: GPO, 1988); U.S. Congress, House Subcommittee on Government Management, Information, and Technology, *The Inspector General Act of 1978: Twenty Years After Passage. Are the Inspectors General Fulfilling Their Mission?*, Hearings, 105th Cong., 2nd sess., April 21, 1998 (not yet printed); and U.S. Library of Congress, Congressional Research Service, *Statutory Offices of Inspector General: Establishment and Evolution*, by Frederick M. Kaiser, CRS Report 98-379 GOV (Washington: April 17, 1998).

Under two major enactments—the Inspector General Act of 1978 (P.L. 95-452; 92 Stat. 1101-1109) and the Inspector General Act Amendments of 1988 (P.L. 100-504; 102 Stat. 2515-2530), codified at 5 U.S.C. Appendix—inspectors general (IGs) have been granted a substantial amount of independence and authority to carry out their basic mandate. Each office is headed by an inspector general who is appointed and removable in one of two ways: (1) presidential appointment, subject to the advice and consent of the Senate, and presidential removal in specified federal establishments, including all cabinet departments and larger federal agencies; and (2) agency head appointment and removal in designated federal entities, the usually smaller boards, foundations, commissions, and corporations.

The dual focus of OIG activities since their inception has been auditing and investigation. Indeed, the 1978 act requires each IG in a federal establishment to appoint two assistant inspectors general, one for auditing and one for investigations. More recently, the offices have added inspection, a short-hand phrase for a usually short-term evaluation of agency programs and operations and their impact.

Purposes, Powers, and Protections

The statutory offices of inspector general have been given a broad mandate, along with an impressive array of powers and protections to carry it out independently and impartially.

Purposes of Offices of Inspector General

Section 2 of the codified law specifies three broad purposes or missions of the OIGs:

- to conduct and supervise audits and investigations relating to the programs and operations of the establishment;
- to provide leadership and coordination and recommend policies for activities designed to: (a) promote economy, efficiency, and effectiveness in the administration of such programs and operations, and (b) prevent and detect fraud and abuse in such programs and operations; and
- to provide a means for keeping the head of the establishment and Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations as well as the necessity for and progress of corrective action.

Appointment, Removal, and General Supervision of IGs

IGs in Federal Establishments. Section 3 of the codified law covers the appointment, removal, and general supervision of inspectors general in federal establishments. The President appoints the IGs in the federal establishments (*i.e.*, cabinet departments and larger federal agencies) by and with the advice and consent of the Senate. The statute also provides that the selection be done without regard to

political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

The IG Act, as amended, provides that an inspector general may be removed from office only by the President, who then must communicate the reasons for removal to both Houses of Congress. There are no explicit restrictions on the President's authority; removal may be with or without cause.

Each inspector general "must report to and be under the general supervision of" the establishment head or, to the extent this authority is delegated, to the officer next in rank below the head, and shall *not* report to or be subject to supervision by any other officer. The restriction on supervision is reinforced by another provision: "Neither the head of the establishment nor any other officer shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena."

Exceptions to this prohibition are few; they are spelled out for only certain departments and for only specified reasons. Sections 8, 8D, and 8E of the IG Act, as amended, authorize the heads of the Departments of Defense, Treasury, and Justice, respectively, to prohibit an IG audit, investigation, or issuance of a subpoena which requires access to information concerning ongoing criminal investigations, sensitive operational plans, intelligence matters, counterintelligence matters, and other matters the disclosure of which would constitute a serious threat to national security. (Under separate statutory authority, the Director of Central Intelligence (DCI) has similar power over the Inspector General in the Central Intelligence Agency (CIA).) Should the agency head use this power to limit the IG's exercise of authority, the reasons must be communicated to the IG and then by the inspector general to specified committees of Congress.

Section 3 also provides for two assistant inspectors general within each IG office in the specified federal establishments: *i.e.*, an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

IGs in Designated Federal Entities. Section 8G covers the same matters for offices of inspectors general in "Designated Federal Entities," a category of organization added by the 1988 Amendments. These entities include the Consumer Product Safety Commission, Federal Communications Commission, Federal Labor Relations Authority, and Securities and Exchange Commission, along with numerous other usually small boards, commissions, government corporations, and foundations.

In addition to these entities, the inspector general in the Government Printing Office (GPO)—the only legislative branch entity with a statutory office of inspector general—operates under similar guidelines. Because GPO is a legislative branch organization, however, its OIG was established under separate public law (44 U.S.C. 3901-3903).

The appointment and removal provisions for IGs in designated federal entities (and in GPO) differ from those which govern presidentially-appointed IGs. The inspectors general in designated entities are appointed by the agency head. Regarding

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removal, the agency head may remove or transfer the IG, but must promptly communicate in writing the reasons for such action to both Houses of Congress.

As with the presidentially appointed inspectors general, however, the IGs in the designated federal entities are required to report to and be under the “general supervision” of the agency head. Furthermore, neither the head nor any other officer can interfere with an IG audit or investigation or issuance of a subpoena.

Duties of IGs

The broad mandates, highlighted in section 2, are spelled out in greater detail in section 4 of the codified law. Each inspector general is required to perform specific duties to achieve the goals of promoting economy and efficiency and of detecting and preventing waste, fraud, and abuse. These duties illustrate the IG’s unique role within the agency and the broad grant of authority delegated by Congress. The IGs are specifically directed to:

- provide policy direction for, conduct, supervise, and coordinate audits and investigations relating to the establishment’s programs and operations;
- review existing and proposed legislation and regulations relating to programs and operations and make recommendations in the semiannual reports concerning the impact of the laws or regulations on the economy and efficiency in the establishment’s programs and operations and on the prevention and detection of fraud and abuse;
- recommend policies for, conduct, supervise, or coordinate other relevant activities of the establishment;
- recommend policies for, conduct, supervise, or coordinate relationships with other federal agencies, with state and local governmental agencies, and with nongovernmental entities with respect to promoting economy and efficiency and preventing and detecting fraud and abuse in establishment programs and with respect to identifying and prosecuting participants in fraud or abuse; and
- report expeditiously to the Attorney General whenever the inspector general has reasonable grounds to believe that there has been a violation of federal criminal law.

IG Reporting to and Informing the Agency Head and Congress

Under section 5, inspectors general have two basic types of reporting requirements to the agency head and to Congress: *i.e.*, semiannual reports and seven-day letter reports dealing with particularly egregious problems. These complement the section 4 requirement to keep the agency head and Congress “fully and currently informed.”

Semiannual Reports. IGs are directed to make semiannual reports that summarize the OIG’s activities for the previous six months, itemizing waste, fraud,

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and abuse problems, and identifying proposals for corrective action. The 1988 amendments refined and enhanced several of the semiannual reports' ingredients. For example, the reports must contain certain entries, some of which include:

- a description of significant problems, abuses, and deficiencies relating to programs and operations;
- a description of recommendations for corrective action;
- an identification of each significant recommendation contained in the previous reports on which corrective action has not been completed; and,
- statistical information relating to costs, management of funds, and related matters.

These IG reports go directly to the agency head, who must transmit them unaltered to appropriate congressional committees within 30 days. After another 60 days, such reports are to be made available to the public. The agency head is authorized to append comments and specific data and information to the IG reports; this additional information includes statistical tables showing audit reports and dollar value of recommendations of disallowed costs and projected savings of recommendations for funds which could be put to a better use.

Seven-Day Letter Reports. The Inspector General Act, as amended, also requires the IG to report immediately to the agency head whenever the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." Such communications must be transmitted—unaltered but allowing for comments the head deems appropriate—to the appropriate congressional committees within seven days.

Other Channels of Communication. The enactment provides for additional channels for IGs to communicate with the agency head and Congress. Section 4 requires the IG:

to keep the head of such establishment and Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

The concept of keeping the head and Congress informed "otherwise" (separate from the required reports) allows for a variety of mechanisms for the inspector general or the office to communicate with Congress. These means extend to: testifying at congressional hearings; meeting with lawmakers and staff; and providing information and reports directly to Members of Congress, its committees and subcommittees, and other offices.

Authority of IGs

To carry out the purposes of the act, Congress has granted the inspectors general broad authority.

Specific Powers. Section 6 of the codified legislation authorizes the IGs, among other things:

- to conduct audits and investigations and make reports relating to the administration of programs and operations;
- to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to programs and operations with respect to which the IG has responsibilities under the act;
- to request assistance from other federal, state, and local government agencies;
- to issue subpoenas for the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to perform the IG's functions;²
- to administer to or take from any person an oath, affirmation, or affidavit;
- to have direct and prompt access to the agency head;
- to select, appoint, and employ officers and employees to carry out the functions, powers, and duties of the office of the inspector general;
- to obtain the services of experts and consultants on a temporary or intermittent basis, as authorized by 5 U.S.C. 3109; and
- to enter into contracts and other arrangements for audits, studies, and other services with public agencies as well as private persons and to make such payments as may be necessary to carry out the act.

The scope of an IG's investigative authority is seen further in the range of matters the inspector general may investigate stemming from an employee complaint or disclosure of information. Under section 7 of the act, the inspector general is authorized to receive and investigate complaints or information from an employee concerning the possible existence of an activity constituting: a violation of law, rules, or regulations; mismanagement, gross waste of funds, and abuse of authority; or a substantial and specific danger to the public health and safety. In such instances, the IG shall not disclose the identity of the employee without the employee's consent, unless the IG determines that such disclosure is unavoidable during the course of the

² This section does not permit the IG to use the subpoena power to obtain documents and information from other federal agencies. 5 U.S.C. App. 3, §6.

investigation. The act, supplementing other “whistleblower” statutes,³ also prohibits reprisals against employees who properly make complaints or disclose information to the IG.

Prohibition on Program Operating Responsibilities. Notwithstanding the broad powers granted by the IG Act, as amended, inspectors general are prohibited from taking corrective action or instituting changes themselves. Indeed, section 9 of the act expressly forbids the transfer “of program operating responsibilities” to an IG. This prohibition is designed to ensure the integrity of an IG’s audit or investigation; if an IG were to carry out programs or institute changes, he or she would not be able to audit or investigate them objectively or impartially in the future.

Law Enforcement Powers. Despite the broad range of investigative authority under the IG Act, as amended, law enforcement powers have *not* been granted across-the-board in public law. Instead, the OIGs that have such authority—to carry firearms, make arrests without warrants, and obtain and execute search warrants—have acquired them in one of four basic ways: through transfers of pre-existing offices which held relevant powers when the OIG was created, specific statutory grants to a particular office (*e.g.*, in the Agriculture and Defense Departments), delegation of relevant authority and jurisdiction by the agency head, and special deputation by the Department of Justice.

In the past, IGs have received *ad hoc*, temporary special deputation from the Justice Department when law enforcement powers were needed independently (that is, without relying upon other agencies to make arrests, carry firearms, or execute search warrants). Criticism arose from the IG community, however, over the costs associated with such deputation, delays in processing OIG applications for it, and its limited duration and extent. As a result, an alternative policy has since been devised to provide extended, blanket deputation to most offices of inspector general in federal establishments (in 23 of the 27 OIGs headed by presidentially appointed IGs). Memoranda of Understanding between the Justice Department and the qualified OIGs implement this program, which is limited to one year and thus must be renewed annually.

Coordination Among and Investigations of IGs

Inspectors general, along with other relevant agencies, are members of one of two coordinating mechanisms, which have been established by executive order and operate under the auspices of the Office of Management and Budget (OMB). In addition, allegations of wrongdoing against IGs themselves or other high ranking officers can be investigated by a special integrity committee consisting of members of these two councils.

³ See, most importantly, the Whistleblower Protection Act of 1989 (103 Stat. 16 *et seq.*) and its companion legislation setting forth the Merit System Principles (5 U.S.C. 2301-2305).

Coordination

Two councils—the President’s Council on Integrity and Efficiency (PCIE), for the presidentially-appointed IGs, and the Executive Council on Integrity and Efficiency (ECIE), for agency-head appointees—provide a coordinating mechanism for the inspectors general, along with representatives from other appropriate organizations. The other members include: the Deputy Director for Management of the Office of Management and Budget, who chairs both councils; the Associate Deputy Director for Investigations of the Federal Bureau of Investigation (FBI); the Controller of the Office of Federal Financial Management; the Director of the Office of Government Ethics; the Special Counsel of the Office of Special Counsel; and the Deputy Director of the Office of Personnel Management. Besides these individuals, the Vice Chairperson of the PCIE sits on the ECIE and the Vice Chairperson of the ECIE, on the PCIE.

The President’s Council on Integrity and Efficiency, the older of the two councils, was established in 1981 by President Reagan through Executive Order 12301. Both councils are now governed by Executive Order 12805, issued by President Bush in 1992. Among their functions, the councils “shall continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and shall develop plans for coordinated, Governmentwide activities that address these problems and promote economy and efficiency in Federal programs and operations.”

Administrative Investigations

Allegations of wrongdoing by inspectors general or other high-ranking officers in an IG office may be investigated by a special Integrity Committee, following a process authorized by Executive Order 12993, issued by President Clinton in 1996. Such a committee, established by the Chairperson of the PCIE and ECIE (*i.e.*, the Deputy Director for Management from OMB), is to consist of at least the following PCIE and ECIE members: the FBI representative, who chairs the committee; the Special Counsel of the Office of Special Counsel; the Director of the Office of Government Ethics; and three or more IGs, representing both the PCIE and the ECIE. In addition, the Chief of the Public Integrity Section of the Criminal Division of the Department of Justice serves as an advisor to the Integrity Committee with respect to its responsibilities and functions.

Once it receives allegations of wrongdoing, the Integrity Committee reviews them and, where appropriate, refers them to one of two investigative entities: either to an agency with jurisdiction over the matter or to an investigative team composed of selected investigators supervised and controlled by the Integrity Committee’s chairperson.

Current Issues Affecting Inspectors General

The issues affecting the statutory IGs can be grouped under five broad categories:

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- institutional arrangements and procedures;
- changes in authority of the IGs;
- effectiveness and orientation of the IGs, as well as the PCIE and ECIE;
- reporting to the agency head and Congress; and
- personnel practices and incentive awards.

Each of these issues is connected to the need for additional information and study or to options for change. These have arisen because of perceived problems or weaknesses in the existing offices' resources, capabilities, operations, or authority; a possible need for statutory OIGs in government organizations or entities which do not have them currently; initiatives from the inspectors general directly to enhance their powers; or recent studies of their operations and recommendations for change coming from Members and committees of Congress or from outside sources.

Underlying some of the issues and options for change are: differences among the IGs, based in part upon the different needs and characteristics of the establishments where they serve as well as the characteristics, experience, and orientation of the IG; possible tension between the audit and investigation functions of the offices; differences in the IGs' focus between prevention and detection; concerns about IG independence (from the establishment officers) versus IG impact (by working closely with the same officials); and disputes between certain IGs and the Department of Justice over their authority and jurisdiction.

The following provides suggestions for each of the five broad issues, based on the public record since the IGs were established. The Congressional Research Service takes no position in support of or in opposition to these suggestions.

Institutional and Procedural Arrangements

- **Changing the removal provision for IGs by requiring that any such action by the President or agency head be "for cause," such as neglect of duty, malfeasance, or serious disability.**
- **Setting a term of office (e.g., 6, 8, or 10 years) for the IGs, to encourage longer service and greater stability in a single post than is now common, particularly in the designated federal entities.**
- **Establishing an inspector general in the Executive Office of the President (with jurisdiction, for instance, over statutorily created entities therein).**
- **Establishing by statute offices of inspectors general in congressional branch support agencies, particularly the General Accounting Office and the Library of Congress, modeled perhaps after the OIG in the Government Printing Office or in designated federal entities, where the IG is appointed by the agency head.**

- **Bringing the OIG in the Government Printing Office into closer conformity with the IG Act provisions affecting OIGs in designated federal entities.**
- **Adding IG positions in other entities which might now meet the criteria used in the 1988 amendments for the designated federal entities but did not then.**
- **Setting up a panel of PCIE members to make recommendations to the entity heads or screen possible candidates for the IGs in the smaller designated federal entities.**
- **Placing certain OIGs in designated federal entities under a statutory inspector general in a related major establishment.** This might be considered because of the OIGs small size, limited resources, or problems with independence, capabilities, and effectiveness. Presently, there is only one dual inspector general assignment: i.e., the IG for the State Department also serves as the IG for the Arms Control and Disarmament Agency.
- **Having one person be the inspector general for all or a number of smaller designated federal entities.** For instance, one individual could be the inspector general in perhaps 10 or 11 small entities; thus, the so-called mini-IGs would have a combined total of three IGs, contrasted with the more than 30 presently. Because of this combination, the newly created posts could become presidential nominations subject to Senate confirmation, rather than remaining as agency head appointments. This might also be a way of overcoming the limitations of small size, few resources, and limited capabilities, by comparison to other statutory IGs.
- **Examining the offices with presidentially appointed IGs established by the 1988 IG Act Amendments and since then.** This review would look at the newest of the presidentially appointed IG positions with a view to assessing their performance and reviewing any concerns about their independence and their offices' capabilities.
- **Reviewing the statutory limitations on the Treasury Department IG's jurisdiction and authority over the law enforcement organizations in the Department: i.e., Bureau of Alcohol, Tobacco and Firearms; Customs Service; Internal Revenue Service (IRS); and Secret Service.** This could examine whether there is a need to modify the current relationship with the existing Treasury Department IG or possibly to create a separate IG for one or all of these organizations, particularly the IRS, because of concerns about its performance and conduct.
- **Establishing a separate office of inspector general for the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) in the Department of Justice or, alternatively, augmenting the authority and jurisdiction of the Justice Department inspector general over them.** These options might be considered because of the size and importance of DEA and FBI, sensitivity of their operations, criticisms of past performance, and their

relative independence from the Justice Department office of inspector general by comparison to other bureaus and organizations within the Department.

- **Examining and clarifying in statute the role and responsibilities of the Justice Department IG with regard to the Office of Professional Responsibility (OPR), an administratively created office, along with other internal investigative or audit units in the department.** Currently, for instance, there is a dispute within the Justice Department about the scope of the IG's jurisdiction vis-a-vis OPR's, regarding investigation of officers or employees in attorney positions.
- **Clarifying or changing the relationship of the IGs in the individual Armed Services with the Department of Defense (DOD) IG.** This might include placing the military IGs directly and explicitly under the control of the civilian DOD inspector general.
- **Expanding or clarifying the jurisdiction and authority of the IG in the Central Intelligence Agency with respect to other intelligence agencies, for instance, those in the Departments of Defense and Justice.** One option would be to extend the CIA IG's jurisdiction to mirror the jurisdiction of the Director of Central of Intelligence, resulting in an inspector general for the entire intelligence community.
- **Examining the relationship of the IG with the Chief Financial Officer (CFO) in each establishment where both posts exist.**
- **Creating the post of assistant inspector general for inspections, to supplement the existing ones for auditing and investigations.**

Authority of Inspectors General

- **Reviewing and further clarifying, if necessary, the scope and tools of the IGs' regulatory investigation authority.** Certain limits on this authority and jurisdiction were prescribed in a 1989 Justice Department Office of Legal Counsel memorandum, commonly known as the "Kmiec memo" for its author. The following year, the Acting Attorney General, based on discussions between the Department of Justice and the PCIE, issued a followup memorandum, establishing a set of principles that attempt to clarify the earlier opinion.
- **Examining and possibly expanding and standardizing law enforcement authority for criminal investigators in the offices of inspector general.** This area of inquiry could look at: whether the current arrangements, especially the long-term special deputation by the Marshals Service, have proven effective and at what costs and impact on the offices of inspector general; whether there should be across-the-board law enforcement powers in public law or whether law enforcement powers, if expanded by statute, should be granted selectively to specific agencies; and, most fundamentally, whether there is a need for independent law enforcement authority for OIG criminal investigators, by comparison to other mechanisms which rely upon the

Marshals Service or other law enforcement entities, and what impact such a change would produce in the OIGs themselves, in their relationship with the Justice Department, and in crime control efforts at the federal level.

- **Enhancing IG testimonial subpoena authority for all statutory inspectors general under the 1978 IG Act.** This change could aid IGs especially in gathering information about alleged abuses of authority and evidence about suspected criminal wrong-doing.
- **Examining and possibly clarifying the rights of employees who are interviewed by IG staff, such as the right to counsel or to union representation at such meetings.**
- **Clarifying or expanding IG access to certain private records of public officials.** These might include such items as income tax records and other financial records.
- **Protecting the confidentiality of “whistleblowers” and other employees who bring allegations of wrong-doing to the IGs’ attention.** This might result in examining instances where such confidentiality has not been adequately protected, where the individual employee protested the disclosure, and where (alleged) reprisals resulted.
- **Granting IGs authority to halt specific projects or operations which are found to have “particularly serious or flagrant problems” and which are reported to the agency head and within seven days to Congress.** (Only the now-defunct Inspector General for Foreign Assistance has held authority to halt a project.) These new powers could help to improve agency responsiveness to IG findings of these serious problems and subsequent recommendations for corrective action.
- **Providing prosecutorial authority for IGs in specified areas, possibly on a trial basis.** This power could increase the impact of IG findings of criminal conduct. Currently, prosecutions based on such discoveries are conducted by U.S. Attorneys and the Department of Justice. These Justice Department prosecutors may be overwhelmed with other cases that have a higher priority, such as those involving illegal narcotics, thus, reducing the likelihood of prosecutions based on IG findings of wrongdoing (for instance, for Medicare or Medicaid fraud).

Effectiveness and Orientation of IGs, PCIE, and ECIE

- **Measuring effectiveness and orientation of the offices and comparing them over time.** This could include attempts to determine changes within and between the audit and investigation functions since the establishment of an OIG, between an IG’s prevention and detection focuses, or between his or her possible roles as an “outsider” (e.g., an independent critic) or “insider” (e.g., an ally of management). Other studies could focus on corrective action taken by an agency on IG recommendations, based in part on the semiannual

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statistical reporting provisions required by the 1988 Amendments to the IG Act, these studies might examine whether the proposed corrective actions have actually taken place, to what extent, and with what results. A related inquiry might question the budgetary impact of corrective recommendations that have been implemented, asking, for instance, whether the cost-savings resulted in a reduction of an agency's budget requests.

- **Using different measurements or bases to assess performance effectiveness and success.** Different kinds of measurements than presently used might reveal different levels or rates of success and effectiveness of IGs.
- **Assessing the role of OIGs in implementation of the Government Performance and Results Act, both for themselves and for the agencies in which they are located.**
- **Examining the role of OIGs in helping to determine, commenting upon, and recommending corrective action for the high risk or high vulnerability areas in federal programs that have been identified by GAO.**
- **Requiring that the summary reports on IG activities produced by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency be issued semiannually.** The PCIE reports had been issued twice a year until the FY 1988 report. These accounts, along with the ECIE reports, now appear only once a year, and their release is often delayed by more than six months after the end of the fiscal year. This results not only in fewer summary accounts of IG activities but also in less timely information and data than would be available if they were issued semiannually.
- **Examining the role and responsibilities of the President's Council on Integrity and Efficiency (PCIE), covering presidentially-appointed IGs, and the Executive Council on Integrity and Efficiency (ECIE), covering entity-head appointments.** This effort could examine how the PCIE and ECIE have contributed to the effectiveness of the IGs, presumably through improved coordination; any OMB followup to such efforts; what other techniques or operations might be adopted along the same lines; and whether individual IG activities, operations, or independence might have been jeopardized or reduced because of PCIE or ECIE demands.
- **Looking into the controls (via the PCIE/ECIE Integrity Committee) over alleged abuses of authority or other improprieties by IGs or their top assistants.**
- **Examining what has happened to IG findings of suspected criminal wrongdoing reported to the Attorney General.** This might include comparing among the IGs the number and type of such reported suspicions, as well as the Justice Department's own followup investigations and prosecutions. This examination could lead to determining the reasons why the Justice Department followed up (or did not do so) with its own investigations

and prosecutions and, thus, help to improve IG preliminary investigations and gathering of evidence, if that appears necessary.

Reporting to the Agency Head and Congress

- **Enhancing and standardizing the data and information on investigations in the semiannual reports.** This might follow the lines for audit statistics and data required by the 1988 IG Act Amendments.
- **Improving communication surrounding the major findings, conclusions, and recommendations in the semiannual reports.** This could occur through, for instance, regular hearings with relevant congressional subcommittees when the report is issued and in-person briefings by IG personnel for congressional staff on relevant panels.
- **Consolidating or coordinating the semiannual reports from IGs with the periodic reports submitted under other relevant statutes, such as the Chief Financial Officers Act and the Federal Managers' Financial Integrity Act.**
- **Requiring that the IGs issue their summary activity reports only annually rather than semiannually, as is the case now.**
- **Increasing the use of the seven-day letter reports about "particularly serious or flagrant problems."** This might be accomplished by clarifying the meaning of the phrase in law, in a congressional report, or in a PCIE advisory opinion to the IGs. The effort might also lead to setting specific criteria and standards for submitting such reports. It might, for instance, require that any finding which is repeated in three successive semiannual reports be considered "particularly serious or flagrant" and automatically submitted to the agency head and then sent to Congress within seven days. This possible product could be based on an examination of the infrequent use of the seven-day letter reports—about once a year for all IGs—and a comparison of this use with episodes that appear to meet a common understanding of "particularly serious or flagrant problems" but were not reported under this provision.
- **Examining systematically the agency heads' and Congress's response to seven-day letter reports about particularly serious or flagrant problems discovered by the IGs.**
- **Requiring the IG to issue a confidential report directly to the appropriate congressional committees whenever the head of the establishment is the subject of an IG investigation.** Presently, only the CIA Inspector General has this authority (for the Director of Central Intelligence).

Personnel Practices and Incentive Awards

- **Comparing personnel practices of IGs.** This might include examining whether the IG hires his or her own staff or relies upon personnel rotating into

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and out of the office from other parts of the establishment. It could also involve a comparison of the recruitment practices and selection criteria for new hirings, promotional opportunities and practices, and complaints or grievances from IG personnel in this field.

- **Comparing changes over time between the audit and investigative side of each OIG.** This effort could help to determine whether any growth in one side has been accomplished at the expense of the other, and if so, why.
- **Contracting out for activities and operations.** This could involve a review of: such contracting among IGs currently or for each IG over time, what types of activities are contracted for, actual costs and cost-benefits, and the possible loss of in-house capabilities through a reliance on such outsourcing of activities and operations, which might result in “hollow government” (that is, the inability of a government office to perform its basic functions or activities itself).
- **Using “whistleblower” cash incentive awards.** This effort could look at the extent of their use by the inspectors general to reward federal personnel for cost-saving disclosures, differences among the IGs, and changes in usage over time.
- **Allowing IGs to be eligible for incentive awards or not.** An examination of this matter might first of all review the differences in accepting incentive awards among IGs and then examine the differences of opinion over whether IGs should be eligible for such awards, particularly those granted by the establishment head or based on his or her recommendation. If these types of awards are found acceptable, attention might then be given to alternative arrangements for nominating IGs—possibly through a panel of PCIE or ECIE members or through a panel of experts set up under the Federal Advisory Committee Act—to avoid the appearance of a conflict of interest.